

EIGHTY-FOURTH DAY

SATURDAY, MAY 24, 1997

PROCEEDINGS

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by President Pro Tempore Zaffirini.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Moncrief, Nixon, Ogden, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Nelson.

The President Pro Tempore announced that a quorum of the Senate was present.

The Reverend Glenda Whitehead, First United Methodist Church, Hico, offered the invocation as follows:

Gracious and loving God, for the wonder of this day, for the freedom we enjoy as citizens of this great nation, and for the grand and glorious State of Texas, we give You thanks.

Be now with these men and women who have gathered here as representatives of the people of this great state. Help them to be open to Your will, sensitive to Your nudging, and ever mindful of the vast array of persons they represent.

We thank You for their time, their leadership, their willingness to serve their fellow Texans. May they be worthy of the offices to which they have been elected and may they always be cognizant of the awesome responsibilities that have been placed in their hands.

Guide and uphold them, O God, now and forever. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

On motion of Senator Armbrister, Senator Nelson was granted leave of absence for today on account of important business.

CO-AUTHOR OF SENATE BILL 1246

On motion of Senator Madla and by unanimous consent, Senator Zaffirini will be shown as Co-author of **SB 1246**.

CAPITOL PHYSICIAN

Senator Ogden was recognized and presented Dr. Robert Stark of Brenham as the "Doctor for the Day."

The Senate welcomed Dr. Stark and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

Saturday, May 24, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SB 1, Relating to the development and management of the water resources of the state; providing penalties.
(Committee Substitute/Amended)

SB 20, Relating to the creation of certain district courts.
(Committee Substitute/Amended)

SB 46, Relating to the punishment for certain defendants convicted of assaultive offenses, including sexual assault, and for certain offenses committed with intent to commit assaults.

SB 54, Relating to access to certain obstetrical or gynecological health care under a health benefit plan; providing administrative penalties.
(Committee Substitute/Amended)

SB 187, Relating to the allocation of money in the law enforcement officer standards and education account to local law enforcement agencies.

SB 205, Relating to the administration of county roads.
(Committee Substitute)

SB 227, Relating to a grant for a local area adversely affected by a reduction in defense-related activity.

SB 253, Relating to the selection of telecommunications utilities by customers.

SB 310, Relating to certain judicial salaries.
(Amended)

SB 329, Relating to the offense of making a false report to a peace officer or to an employee of a law enforcement agency.
(Committee Substitute)

SB 455, Relating to liability insurance coverage for a charitable organization.
(Amended)

SB 472, Relating to powers of certain regional transportation authorities.
(Amended)

SB 489, Relating to the regulation of explosives by a county fire marshal in certain counties.
(Committee Substitute)

SB 674, Relating to the prosecution of the offense of possession or promotion of child pornography.

SB 877, Relating to the regulation of the practice of dentistry.
(Committee Substitute)

SB 1106, Relating to actions for the amount of deductible under personal automobile insurance policies.

SB 1417, Relating to judicial efficiency.
(Amended)

SB 1529, Relating to the provision of housing and utility services for certain dwellings.
(Amended)

SB 1877, Relating to creating a Texas community investment program to assist certain businesses in distressed areas of the state.
(Amended)

SJR 17, Proposing a constitutional amendment relating to creation of the Texas Water Development Fund II; to authorizing the Texas Water Development Board to administer the fund and issue general obligation bonds for the purposes of the fund; and to the flow of funds for repayment of Texas agricultural water conservation bonds.
(Amended)

SJR 45, Proposing a constitutional amendment to authorize the legislature to permit a taxing unit to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 63 (Viva-voce vote)

HB 119 (Viva-voce vote)

HB 137 (Viva-voce vote)

HB 155 (Viva-voce vote)

HB 218 (Viva-voce vote)

HB 733 (140 Yeas 0 Nays 1 Present-not voting)

HB 812 (Viva-voce vote)

HB 1070 (Viva-voce vote)

HB 1477 (Viva-voce vote)

HB 1637 (Viva-voce vote)
HB 1909 (Viva-voce vote)
HB 1917 (Viva-voce vote)
HB 2063 (Viva-voce vote)
HB 2146 (121 Yeas 17 Nays 2 Present-not voting)
HB 2482 (Viva-voce vote)
HB 2522 (Viva-voce vote)
HB 3016 (143 Ayes 0 Nays 1 Present-not voting)
HB 3052 (Viva-voce vote)
HB 3087 (Viva-voce vote)
HB 3391 (141 Yeas 0 Nays 1 Present-not voting)
HB 3563 (Viva-voce vote)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 1856

House Conferees: Telford - Chair/Carter/Driver/Hightower/McClendon

HB 2017

House Conferees: Maxey - Chair/Coleman/Davila/Glaze/Hirschi

HB 2086

House Conferees: Palmer - Chair/Jones, Delwin/Pickett/Tillery/Yarbrough

HB 2906

House Conferees: Wolens - Chair/Hilbert/Hunter/Jones, Delwin/Ramsay

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 875

House Conferees: Danburg - Chair/Allen/Driver/Keel, Terry/McClendon

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1975 (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

SENATE BILL 1824 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 1824** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1824** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the formation of an integrated health care system by the El Paso County Hospital District and a medical school.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 281, Health and Safety Code, is amended by adding Section 281.0517 to read as follows:

Sec. 281.0517. INTEGRATED HEALTH CARE SYSTEM. (a) In this section:

(1) "Integrated health care system" means a nonprofit corporation established and operated by a district and a medical school to provide or arrange for comprehensive health care services for residents of the district.

(2) "Provider" means a physician or a provider as defined under Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code).

(3) "Medical school" means a medical school governed by Chapter 110, Education Code.

(b) The El Paso County Hospital District and a medical school may establish and operate an integrated health care system.

(c) To provide or arrange for comprehensive health care services, an integrated health care system created under this section may:

(1) own, acquire, lease, or contract for all necessary assets;

(2) enter into contracts with providers for the provision of health care services directly or indirectly through subcontract;

(3) provide or enter into a contract with an individual or business entity under which the individual or entity provides necessary management or administrative services for the system and the system's providers;

(4) enter into a contract or other agreement with a business or governmental entity under which the system is paid to provide health care services; and

(5) enter into a fee-for-service, capitated, or risk-sharing health care service arrangement.

(d) An integrated health care system that recites in its articles of incorporation that it is created under this section is:

(1) subject to:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code;

(C) the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(D) Article 21.52F, Insurance Code; and

(E) Chapter 262, Local Government Code; and

(2) a unit of local government for the purposes of Chapter 101, Civil Practice and Remedies Code.

(e) Notwithstanding Subsection (d)(1)(A), an integrated health care system created under this section may hold a closed meeting to deliberate:

(1) pricing or financial planning relating to a bid or negotiation for a contract to provide a service or product line, if an open meeting would have a detrimental effect on the position of the system in the bid or negotiation process; or

(2) a proposed new service or product line, if the meeting is held before public announcement of the service or product line.

(f) Notwithstanding Subsection (d)(1)(B), information relating to the following is confidential and not subject to disclosure:

(1) pricing or financial planning relating to a bid or negotiation for a contract to provide a service or product line, if disclosure would have a detrimental effect on the position of the system in the bid or negotiation process; or

(2) a proposed new service or product line, if disclosure is requested before public announcement of the service or product line.

(g) Subject to the requirements and limitations of the local health care market, an integrated health care system created under this section shall make reasonable efforts to include in its provider group community providers other than the medical school and a hospital of the El Paso County Hospital District.

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Shapleigh, the Senate concurred in the House amendment to SB 1824 by a viva voce vote.

SENATE BILL 617 WITH HOUSE AMENDMENT

Senator Moncrief called SB 617 from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment

Amend SB 617 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the practice and conduct of registered nurses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 4518, Revised Statutes, is amended by adding Section 8 to read as follows:

Sec. 8. (a) In this section:

(1) "Pilot program" means a pilot program developed or approved under this section.

(2) "Proactive nursing peer review" means peer review that is not initiated for the purpose of determining culpability with respect to a particular incident.

(3) "Targeted continuing nursing education" means continuing education focusing on a competency identified as one that a significant

portion of registered nurses in a particular practice area would likely benefit from taking.

(b) The Board may develop pilot programs to evaluate the effectiveness of mechanisms for assuring: (1) maintenance of clinical competency by registered nurses in their area of practice, including the use of proactive nursing peer review and targeted continuing nursing education; and (2) that registered nurses understand the laws and regulations governing the practice of professional nursing. The pilot programs shall be designed to test the effectiveness of a variety of mechanisms in a variety of practice settings. The Board may approve pilot programs to be conducted by persons other than the Board.

(c) Subject to appropriations by the legislature, the Board may expend funds to develop or fund pilot programs. The Board may contract with, make grants to, or make other arrangements with an agency, professional association, institution, individual, or other person to implement this section.

(d) In developing, administering, approving, and funding pilot programs, the Board shall consult with the Competency Advisory Committee on matters relating to ensuring the maintenance of continued competency of registered nurses and with the Laws and Regulations Advisory Committee on matters relating to ensuring that registered nurses understand the laws and regulations governing the practice of professional nursing.

(e) The Competency Advisory Committee is composed of the following members appointed by the Board:

- (1) a representative from the Texas Nurses Association;
- (2) a representative from the Texas Nurses Foundation;
- (3) a representative from the Texas Organization of Nurse Executives;
- (4) a registered nurse representative from the Texas Hospital Association;
- (5) a registered nurse representative from the Texas Health Care Association;
- (6) a registered nurse representative from the Texas Association of Homes and Services for the Aging;
- (7) a registered nurse representative from the Texas Association for Home Care;
- (8) a professional nursing educator;
- (9) a representative from the Consumers Union;
- (10) a representative from the Texas Department of Mental Health and Mental Retardation; and
- (11) any other persons appointed by the Board.

(f) The Laws and Regulations Advisory Committee is composed of the following members appointed by the Board:

- (1) a representative of the Texas Nurses Association;
- (2) a representative of the Texas League for Nursing;
- (3) a representative of the Texas Chapter of the American Association of Nurse Attorneys;
- (4) a representative of the Texas Organization of Baccalaureate and Graduate Nursing Educators;

(5) a representative of the Texas Organization for Associate Degree Nursing;

(6) a representative of the Texas Organization of Nurse Executives;

(7) a representative of the American Association of Retired Persons;

(8) a registered nurse researcher; and

(9) any other persons appointed by the Board.

(g) Except as provided in this subsection, the Board, in developing or approving a pilot program, may exempt the program from rules adopted under this chapter. Provisions of this chapter relating to mandatory reporting and peer review shall apply to pilot programs except that Section 1A, Article 4525b, Revised Statutes, shall not apply to programs utilizing proactive peer review. The Board may establish alternative criteria for nursing peer review committees conducting proactive peer review.

(h) Beginning November 1, 1998, the Board shall issue an annual report of any pilot programs developed or approved and a status report on those programs, including any preliminary or final findings concerning their effectiveness. The report shall be mailed to statewide associations of registered nurses, registered nurse educators, and employers of registered nurses that have requested a copy. A final report shall be issued by the Board not later than September 1, 2000.

SECTION 2. Section 1, Article 4513, Revised Statutes, is amended to read as follows:

Sec. 1. COMPOSITION OF BOARD; PROGRAMS OF STUDY. The Board of Nurse Examiners is composed of nine members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees. The board shall prescribe three programs of study to prepare professional nurse practitioners, to wit:

(1) The Baccalaureate Degree Program—A program leading to a baccalaureate degree in nursing conducted by an educational unit in nursing (department, division, school, or college) which is a part of a senior college or university; (2) The Associate Degree Program—A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or a university; and (3) The Diploma Program—A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital. Six of the board members must be Registered Nurses, three of whom shall be engaged in professional nurse education [~~and shall be representative of said three programs~~] in that one shall be a nurse faculty member in a school of nursing pursuing the Baccalaureate Degree Program; one shall be a nurse faculty member in a school of nursing pursuing the Associate Degree Program; and one shall be a nurse faculty member in a graduate school of nursing preparing Advanced Practice Nurses [pursuing the Diploma Program]. Three members must be members of the general public.

SECTION 3. Article 4519a, Revised Statutes, is amended to read as follows:

Art. 4519a. DECLARATORY ORDERS OF ELIGIBILITY FOR LICENSE.

Sec. 1. (a) An individual enrolled or planning to enroll in an educational program that prepares an individual for an initial license as a registered nurse who has reason to believe that the individual is ineligible for the license may petition the board for a declaratory order as to the individual's eligibility. The petition must state the basis for the individual's potential ineligibility. The board shall have the same powers to investigate the petition and the individual's eligibility that it has to investigate a person applying for a license. The petitioning individual or the board may amend the petition at any time before a final determination is made to include additional grounds for potential ineligibility.

(b) If the board proposes to find the petitioner ineligible for a license, the petitioner is entitled to a hearing before the board in accordance with Subsection (a) [(b)], Article 4525, Revised Statutes, as amended by Section 8, Chapter 840, Acts of the 73rd Legislature, 1993. The board's order must set out each basis for potential ineligibility and the board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the board at the time the order is issued, the board's ruling on the petition determines the individual's eligibility with respect to the basis for potential ineligibility set out in the order.

Sec. 2. (a) The board may require individuals accepted for enrollment or enrolled in an educational program preparing students for initial licensure as registered nurses to submit information to the board that will permit it to determine whether the individual is aware of the conditions that may disqualify the individual from licensure as a professional nurse upon graduation and of the individual's right to petition the board for a declaratory order of eligibility for licensure under Section 1 of this article. In lieu of requiring the individual to submit the information, the board may require the educational program to collect and submit the information on individuals accepted for enrollment or enrolled in the program. The information shall be submitted in a form approved by the board.

(b) If the board determines that an individual may not be eligible for licensure upon graduation, the board shall notify the educational program of its determination.

SECTION 4. Article 4525, Revised Statutes, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Subsection (a) of this section, a person is not entitled to a hearing on a refusal to renew a license if the person:

(1) fails to submit an application for renewal; or

(2) submits an application that:

(A) is incomplete;

(B) shows on its face that the person does not meet the requirements for renewal; or

(C) is not accompanied by the correct fee.

SECTION 5. This Act takes effect September 1, 1997, except that Section 2 takes effect January 31, 1999.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an

imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 617** by a viva voce vote.

SENATE BILL 1591 WITH HOUSE AMENDMENTS

Senator Haywood called **SB 1591** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

Floor Amendment No. 4

Amend **SB 1591** at page 2, line 6 by adding new subsection 5.123 (f) to read as follows:

(f) This section does not apply to any facility that stores, handles, processes or disposes of radioactive materials.

Floor Amendment No. 9

Amend **SB 1591** (house committee printing, page 2, between lines 5 and 6) by inserting the following:

(f) A permit may satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts.

Amendment No. 1 on Third Reading

Amend **SB 1591** on third reading by striking the text of the Gallego amendment adopted on second reading and substituting the following:

Amend **SB 1591** on page 2, line 6, by adding new subsection 5.123(f) to read as follows:

(f) This section does not authorize exemptions to statutes or regulations for storing, handling, processing or disposing of low level radioactive materials.

The amendments were read.

On motion of Senator Haywood, the Senate concurred in the House amendments to **SB 1591** by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 606 ADOPTED

Senator Lucio called from the President's table the Conference Committee Report on **SB 606**. The Conference Committee Report was read and was filed with the Senate on Thursday, May 22, 1997.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

(Senator Truan in Chair)

SENATE BILL 305 WITH HOUSE AMENDMENTS

Senator Zaffirini called SB 305 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend SB 305 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the Interagency Council on Early Childhood Intervention.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 73.001, Human Resources Code, is amended to read as follows:

Sec. 73.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of the Interagency Council on Early Childhood Intervention.

(2) "Council" means the Interagency Council on Early Childhood Intervention [Services].

(3) "Developmental delay" [(2) "Developmentally delayed child"] means a significant variation [child who is determined by an interdisciplinary team to exhibit:

[(A) a significant delay, beyond acceptable variations] in normal development as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

(A) [(+)] cognitive development;

(B) physical development [(ii) gross or fine motor];

(C) communication development [(iii) language or speech];

(D) [(iv)] social or emotional development; or

(E) adaptive development [(v) self-help skills; or

[(B) an organic defect or a condition that is very likely to result in a delay in one or more of those capabilities or skills].

SECTION 2. Section 73.002, Human Resources Code, is amended to read as follows:

Sec. 73.002. BOARD [INTERAGENCY COUNCIL]. (a) The council is governed by a board composed of:

(1) eight [three] lay members who are the family members [parents] of [developmentally delayed] children with developmental delay, appointed by the governor with the advice and consent of the senate; and

(2) one member who is a representative of the Texas Education Agency, appointed by the commissioner of education.

(b) In addition to the members appointed under Subsection (a), nonvoting representatives shall be appointed by the commissioner or executive head of the following agencies to actively participate in board deliberations and advise the board on the appointing agency's perspective and concerns regarding the early childhood intervention program:

- (1) the Texas Department of Health;
- (2) the Texas Department of Mental Health and Mental Retardation;
- (3) the Texas Commission on Alcohol and Drug Abuse;
- (4) the Texas Department of Human Services;
- (5) the Department of Protective and Regulatory Services; and
- (6) the Texas Workforce Commission.

(c) Five of the lay members of the board must be the parents of children who are receiving or have received early childhood intervention services. Each state [and one representative each from the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Central Education Agency, the Department of Protective and Regulatory Services, and the Texas Commission on Alcohol and Drug Abuse. The governor with the advice and consent of the senate shall appoint the lay members, and the commissioner, director, or executive director of each agency shall appoint that agency's representative. The] agency member on or representative to the board appointed under Subsection (a) or (b) must have [should be a person in the agency with] administrative responsibility in the agency represented by the member or representative for [the supervision of] early childhood intervention [support staff] or related services and must have authority to make decisions and, subject to the approval of the appropriate commissioner or executive head, commit resources on behalf of the appointing agency.

(d) [(b)] Members of the board appointed under Subsection (a) [council] serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year. The representatives to the board appointed under Subsection (b) serve as nonvoting participants and serve at the will of the appointing authority. If a representative [member] appointed by a state agency under Subsection (b) terminates employment with the agency, the representative's [member's] position becomes vacant on the date of termination. It is a ground for removal from the board if a member appointed by a state agency under Subsection (a) terminates employment with the agency.

(e) [(c)] The members of the board [council] shall [annually] elect one member to serve as the presiding officer and one member to serve as assistant presiding officer. Officers shall serve a two-year term [chairperson].

(f) [(d)] The board [council] shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(g) [(e)] Any action taken by the board [council] must be approved by a majority vote of the members present.

(h) [(f)] The board [council] shall establish regulations, policies, and procedures [a policy] for carrying out the council's [its] duties under this chapter.

(i) [(g)] The board [council] shall develop a method for responding to [programs funded under this chapter to respond to individual] complaints regarding services provided by the council [program].

SECTION 3. Chapter 73, Human Resources Code, is amended by adding Section 73.0021 to read as follows:

Sec. 73.0021. ELIGIBILITY REQUIREMENT FOR BOARD MEMBERSHIP. (a) Appointments to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin.

(b) A person is not eligible for appointment as a board member if:

(1) the person does not meet the eligibility requirements under Section 73.002;

(2) the person or the person's spouse is an officer of an agency or paid counsel of an organization with which the council engages in a contractual relationship; or

(3) the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities on behalf of a profession or organization related to council functions.

SECTION 4. Chapter 73, Human Resources Code, is amended by adding Section 73.0022 to read as follows:

Sec. 73.0022. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) is not eligible for appointment to the board under Section 73.002;

(2) does not maintain during service on the board the qualifications required by Section 73.002;

(3) has or develops an interest that conflicts or appears to conflict with the member's position on the board;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent for more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absences are excused by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it was taken when grounds for removal of a board member existed.

(c) If the executive director of the council has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board. The presiding officer shall then notify the appropriate appointing authority of the potential removal and the cause for the potential removal action.

(d) If a board member is removed for cause, the appointing authority shall make a subsequent appointment for the remainder of that board member's term.

SECTION 5. Section 73.003, Human Resources Code, is amended to read as follows:

Sec. 73.003. STRATEGIC [STATE] PLAN. [(*)] The council shall develop and implement a strategic [state] plan for a statewide system of early childhood intervention services, as required by Subchapter VIII, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1471 et seq.), and its subsequent amendments, to ensure that[:

[(1)] the provisions of this chapter are properly implemented by the agencies affected[;

[(2) child and family needs are assessed statewide and all available resources are coordinated to meet those needs;

~~[(3) manpower needs are assessed statewide and strategies are developed to meet those needs;~~

~~[(4) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and~~

~~[(5) a procedure for review of individual complaints about services provided under this chapter is implemented].~~

~~[(b) The council shall make written recommendations for the carrying out of its duties under this chapter. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.]~~

SECTION 6. Section 73.004, Human Resources Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The committee shall meet and serve under the rules of the board [council], but the committee shall elect its own presiding officer [chairperson]. The committee may be divided into regional committees to assist the council in community-level program planning and implementation.

(c) The advisory committee is not subject to Article 6252-33, Revised Statutes.

SECTION 7. Chapter 73, Human Resources Code, is amended by adding Section 73.0041 to read as follows:

Sec. 73.0041. ADVISORY COMMITTEE DUTIES. The advisory committee established under Section 73.004 shall perform the duties and responsibilities required of an advisory committee under Subchapter VIII, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1471 et seq.), and its subsequent amendments.

SECTION 8. Section 73.005, Human Resources Code, is amended to read as follows:

Sec. 73.005. BOARD POWERS AND DUTIES. (a) The board [council] with the advice of the advisory committee shall address contemporary issues affecting intervention services in the state including:

- (1) successful intervention strategies;
- (2) personnel preparation and continuing education;
- (3) screening services;
- (4) day or respite care services;
- (5) public awareness; and
- (6) contemporary research.

(b) The board [council] with the advice of the advisory committee shall advise the legislature on legislation that is needed ~~[to develop further and]~~ to maintain a statewide system of quality intervention services for ~~[all developmentally delayed]~~ children with developmental delay who are under three years of age and the families of those children. The council may develop and submit legislation to the legislature or comment on pending legislation that affects this population.

SECTION 9. Chapter 73, Human Resources Code, is amended by adding Section 73.0051 to read as follows:

Sec. 73.0051. POWERS AND DUTIES OF COUNCIL. (a) The council is the lead agency designated by the governor under Subchapter VIII, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1471 et seq.), and its subsequent amendments, for the administration, supervision, and monitoring of a statewide comprehensive system of early intervention services that will ensure that all infants and toddlers in this state who are below the age of three and have developmental needs or are at risk of developmental delay receive services that are provided in partnership with their families and in the context of their local community.

(b) The council by rule shall:

(1) provide for compliance with the terms and provisions of applicable federal and state laws in the administration of programs and the delivery of services under this chapter;

(2) establish a program to monitor fiscal and program implementation; and

(3) establish appropriate sanctions for providers who fail to comply with statutory and regulatory fiscal and program requirements.

(c) The council may enter into, administer, and monitor contracts with providers for programs and projects authorized under this chapter.

(d) The council shall periodically monitor program activities and fiscal performance of the entities funded under this chapter to determine compliance with federal and state requirements and issue reports regarding program monitoring.

(e) The council may apply for and accept gifts, grants, and donations from public and private sources for use in programs authorized under this chapter. The council shall deposit money received under this section into the state treasury.

(f) The council shall cooperate with the Health and Human Services Commission and other local, state, and federal agencies in the strategic planning, funding, delivery, and monitoring of services authorized under this chapter.

(g) The council shall make periodic reports as required by law to other agencies, the legislature, appropriate committees, the governor, and the Secretary of the United States Department of Education.

(h) The council shall ensure that all programs and council functions are conducted in a nondiscriminatory manner.

SECTION 10. Chapter 73, Human Resources Code, is amended by adding Section 73.0052 to read as follows:

Sec. 73.0052. PERSONNEL MATTERS. (a) The board shall provide to its members and to the employees of the council, as often as necessary, information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(b) The board shall employ an executive director, and the executive director shall establish necessary administrative units, and hire other necessary employees.

(c) Utilizing established standards, the board shall evaluate the performance of the executive director annually.

(d) The executive director or the executive director's designee shall develop an intra-agency career ladder program. Employees will be notified of all available positions. When appropriate, postings will be made available to council employees before public posting.

(e) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for council employees must be based on the system established under this subsection.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the agency workforce that meets federal and state guidelines; and

(3) procedures by which a determination can be made of significant underutilization in the council's workforce of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(g) The policy statement prepared under Subsection (f) must:

(1) cover an annual period;

(2) be updated at least annually; and

(3) be filed with the governor.

SECTION 11. Section 73.006, Human Resources Code, is amended to read as follows:

Sec. 73.006. REIMBURSEMENT FOR EXPENSES ~~[AND STAFF SUPPORT]~~. (a) ~~An agency member on or agency [Agency] representatives to [on] the board and the advisory committee, if any, [council]~~ are entitled to reimbursement for expenses incurred in the performance of their ~~[council]~~ duties by the appointing agencies in accordance with the travel provisions for state employees in the General Appropriations Act.

(b) The lay members of the board [described by Section 73.002(a)] and advisory committee [members] are entitled to reimbursement [from the council] for reasonable [actual] and necessary expenses incurred in the performance of board or advisory committee [council] duties, including reimbursement for child care [or attendant care].

(c) [(b)] The agencies that have a member or representatives [represented] on the board [council] shall provide staff support to the council as needed. The agencies may provide staff support to the committee.

(d) A board member, a nonvoting representative to the board, or an advisory committee member who is disabled and who, because of the disability, requires attendant care to perform the person's duties is entitled to reimbursement for the cost of the attendant care.

[(c) The council shall select and employ:

[(1) an early childhood intervention administrator with the approval of the governor; and

~~[(2) other personnel necessary for the administration of the council's duties.]~~

SECTION 12. Section 73.007, Human Resources Code, is amended to read as follows:

Sec. 73.007. PUBLIC AWARENESS AND TRAINING. The council shall develop and implement:

(1) a general public awareness strategy focusing on the importance of prenatal care and early identification ~~[detection]~~ of infants and toddlers with developmental delay and the availability of ~~[state]~~ resources to meet their ~~[the]~~ needs ~~[of developmentally delayed children under six years of age]~~; and

(2) a statewide plan for conducting ~~[regional]~~ training and technical assistance ~~[sessions]~~ for ~~[public and private]~~ service providers, primary referral sources, and families ~~[who have routine contact]~~ with children under three ~~[six]~~ years of age with ~~[that focuses on methods for early detection of]~~ developmental delay.

SECTION 13. Section 73.008, Human Resources Code, is amended to read as follows:

Sec. 73.008. EARLY IDENTIFICATION STRATEGY. (a) The council shall develop and implement a statewide strategy for:

(1) the early identification of ~~[developmentally delayed]~~ children under three ~~[six]~~ years of age with developmental delay; and

(2) the coordination of programs with ~~[utilizing information from]~~ other agencies serving ~~[handicapped]~~ children with developmental delay.

(b) The strategy must include plans to:

(1) incorporate, strengthen, and expand similar existing local efforts;

(2) incorporate and coordinate screening services currently provided through a public agency; and

(3) establish a liaison with primary referral sources, including hospitals, physicians, public health facilities, and day-care facilities, to encourage referrals of ~~[developmentally delayed]~~ children with developmental delay.

SECTION 14. Section 73.009(a), Human Resources Code, is amended to read as follows:

(a) The council shall establish policies concerning services described by this section. A child under three ~~[six]~~ years of age and the child's family may be referred for services described by this section if the child is:

(1) identified as developmentally delayed;

(2) suspected of being developmentally delayed; or

(3) considered at risk of developmental delay ~~[because of certain biological or environmental factors]~~.

SECTION 15. Section 73.010, Human Resources Code, is amended to read as follows:

Sec. 73.010. ELIGIBILITY FOR SERVICES. ~~[(a)]~~ A ~~[developmentally delayed]~~ child is eligible for services under this chapter if the child:

(1) is under three years of age; and

(2) is documented as having developmental delay or has a medically diagnosed physical or mental condition that has a high probability of resulting

~~in developmental delay [has not reached the age of eligibility for entry into the comprehensive special education program for handicapped children under Section 21.501, Education Code; or~~

~~[(3) is under three years of age and is an eligible child authorized under Section 11.052(a) and Section 11.10(o), Education Code;~~

~~[(b) The council may charge fees for services provided under this chapter].~~

SECTION 16. Section 73.022, Human Resources Code, is amended to read as follows:

Sec. 73.022. FINANCES. (a) The council shall:

(1) ensure compliance with requirements necessary to obtain federal funds in the maximum amount and the most advantageous proportions possible;

(2) apply for, receive, administer, and spend federal and state funds for Subchapter VIII, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1471 et seq.), and its subsequent amendments, dealing with infants and toddlers from birth to age three with developmental delay and their families; and

(3) authorize and account for the classification and spending of maintenance of effort and carryover funds from all sources in carrying out the programs funded under this chapter.

(b) All money paid to the council under this chapter shall be deposited in the state treasury and may be used only for the administration of this chapter.

(c) The financial transactions of the council are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(d) The executive director shall prepare and submit to the board for approval a biennial budget and request for an appropriation by the legislature of funds necessary to carry out the duties of the council. The budget and request must include an estimate of all federal funds to be allocated to the state for the performance of the council's duties.

(e) The council shall submit the budget and appropriations request to the Legislative Budget Board and the governor in the manner prescribed by law.

(f) The council shall annually file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the council during the preceding year in accordance with the General Appropriations Act [Federally Funded Programs. — (a) The Central Education Agency may not impose requirements on an early childhood intervention program that receives funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 2701 et seq.) that are not requirements under federal law or under this chapter.

[(b) The Central Education Agency shall coordinate monitoring required by federal law for early childhood intervention programs with the program monitoring required by this chapter to the extent possible].

SECTION 17. Chapter 73, Human Resources Code, is amended by adding Section 73.023 to read as follows:

Sec. 73.023. APPLICATION OF SUNSET ACT. The Interagency Council on Early Childhood Intervention is subject to Chapter 325.

Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished on September 1, 2003.

SECTION 18. Chapter 73, Human Resources Code, is amended by adding Section 73.024 to read as follows:

Sec. 73.024. OPEN MEETINGS; OPEN RECORDS; ADMINISTRATIVE PROCEDURE. The board, council, and advisory committee are subject to the requirements of the open meetings law, Chapter 551, Government Code, the open records law, Chapter 552, Government Code, and Chapter 2001, Government Code.

SECTION 19. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.132 to read as follows:

Sec. 411.132. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION. (a) The Interagency Council on Early Childhood Intervention is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency that relates to an employee or an applicant for permanent, temporary, or consultative employment or for volunteer positions whose employment or potential employment or volunteer position with the council or a local provider involves the delivery of early childhood intervention services or involves direct interactions with or the opportunity to interact and associate with children.

(b) Criminal history record information obtained by the council under Subsection (a) may not be released or disclosed to any person except on court order, with the consent of the person who is the subject of the criminal history record information, or as provided by Subsection (d).

(c) The council shall destroy criminal history record information that relates to a person after the information is used for its authorized purpose.

(d) The council may provide the applicant, employee, professional consultant, or volunteer with a copy of the person's criminal history record information obtained from the Department of Public Safety, Federal Bureau of Investigation identification division, or another law enforcement agency.

(e) The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to council employees, professional consultants, and applicants for permanent, temporary, or consultative employment or for volunteer positions whose employment or potential employment or volunteer position with the council or a local provider involves the delivery of early childhood intervention services or involves direct interactions with or the opportunity to interact and associate with children.

SECTION 20. Sections 73.011-73.021, Human Resources Code, are repealed.

SECTION 21. (a) As soon as possible after the effective date of this Act, the governor shall appoint the eight lay members of the board of the Interagency Council on Early Childhood Intervention in accordance with Section 73.002, Human Resources Code, as amended by this Act, with three

members' terms expiring February 1, 1999, three members' terms expiring February 1, 2001, and two members' terms expiring February 1, 2003.

(b) As soon as possible after the effective date of this Act, the commissioner of education shall appoint one member to the board of the Interagency Council on Early Childhood Intervention for a term expiring February 1, 2003.

(c) As soon as possible after the effective date of this Act, the executive director or commissioner of the agencies listed in Section 73.002(b), Human Resources Code, as amended by this Act, shall appoint representatives required by that subsection.

(d) Until all members of the board of the Interagency Council on Early Childhood Intervention are appointed and are qualified to take office as required by this Act, a majority of the members who are qualified to serve on the board constitutes a quorum of the board, so long as at least four are qualified.

(e) The term of a member of the council of the Interagency Council on Early Childhood Intervention, as the council existed immediately before the effective date of this Act, expires and the member's position is abolished on the date on which a majority of the members of the board of the Interagency Council on Early Childhood Intervention are appointed and are qualified to take office.

SECTION 22. This Act takes effect September 1, 1997.

SECTION 23. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend CSSB 305 by striking the date "2002" on page 17, line 2 and replacing it with the date "1999".

Floor Amendment No. 2

Amend CSSB 305, Section 73.0051 by adding on page 10 between lines 10 and 11 the following:

(i) The Council shall include parents when deciding the appropriate treatment for the needs of their child/children.

(j) The Council shall not limit services to solely natural environments, but shall also consider center based services.

Floor Amendment No. 3

Amend CSSB 305 as follows:

(1) On page 11, line 15, after "state" strike "guidelines", and substitute the words "laws, rules and regulations and instructions promulgated directly from those laws, rules and regulations".

(2) On page 11, line 18, after "state" strike "guidelines", and substitute the words "laws, rules and regulations and instructions promulgated directly from those laws, rules and regulations".

Floor Amendment No. 4

Amend **CSSB 305** as follows:

On page 5, lines 25 and 26, place a period after the word "year," and delete the remaining text that reads "unless the absences are excused by a majority vote of the board."

Floor Amendment No. 1 on Third Reading

Amend **CSSB 305**, Section 73.0051 on third reading by adding on page 10 between lines 10 and 11 the following:

(i) The Council shall include parents when deciding the appropriate treatment for the needs of their child/children.

(j) The Council shall not limit services to solely natural environments, but shall also make alternatives available when early intervention cannot be achieved satisfactorily in a natural environment.

The amendments were read.

On motion of Senator Zaffirini, the Senate concurred in the House amendments to **SB 305** by a viva voce vote.

SENATE BILL 172 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 172** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 172** in Section 2, Article 21.53F, as added by SECTION 1 of the bill (page 3, between lines 9 and 10, house committee printing), by inserting new Subsection (c) to read as follows:

(c) Notwithstanding Section 172.014, Local Government Code, or any other law, this article applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.

The amendment was read.

On motion of Senator Zaffirini, the Senate concurred in the House amendment to **SB 172** by a viva voce vote.

SENATE BILL 694 WITH HOUSE AMENDMENT

Senator Brown called **SB 694** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 694** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the use of alternative dispute resolution procedures by state agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 10, Government Code, is amended by adding Chapter 2008 to read as follows:

CHAPTER 2008. ALTERNATIVE DISPUTE

RESOLUTION AT STATE AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2008.001. SHORT TITLE. This chapter may be cited as the Governmental Dispute Resolution Act.

Sec. 2008.002. POLICY. It is the policy of this state that disputes before state agencies be resolved as fairly and expeditiously as possible and that each state agency support this policy by developing and using alternative dispute resolution procedures in appropriate aspects of the agency's operations and programs.

Sec. 2008.003. DEFINITIONS. In this chapter:

(1) "Alternative dispute resolution procedure" includes:

(A) a procedure described by Chapter 154, Civil Practice and Remedies Code; and

(B) a combination of the procedures described by Chapter 154, Civil Practice and Remedies Code.

(2) "State agency" means an officer, board, commission, department, or other agency in the executive branch of state government with statewide jurisdiction that makes rules or determines contested cases. The term includes:

(A) the attorney general;

(B) an institution of higher education as defined by Section 61.003, Education Code; and

(C) the State Office of Administrative Hearings.

(3) The following terms have the meanings assigned by Section 2001.003:

(A) "contested case";

(B) "party";

(C) "person"; and

(D) "rule."

Sec. 2008.004. AGENCY CONTRACTS; BUDGETING FOR COSTS.

(a) A state agency may pay for costs necessary to meet the objectives of this chapter, including reasonable fees for training, policy review, system design, evaluation, and the use of impartial third parties. To the extent allowed by the General Appropriations Act, the agency may use for this purpose money budgeted for legal services, executive administration, or any other appropriate aspect of the agency's operations.

(b) A state agency may contract with another state agency, including the Center for Public Policy Dispute Resolution at The University of Texas School of Law, with an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or with a private entity for any service necessary to meet the objectives of this chapter.

Sec. 2008.005. SOVEREIGN IMMUNITY. (a) This chapter does not waive immunity from suit and does not affect a waiver of immunity from suit contained in other law.

(b) The state's sovereign immunity under the Eleventh Amendment to the United States Constitution is not waived by this chapter.

(c) Nothing in this chapter authorizes binding arbitration as a method of alternative dispute resolution.

[Sections 2008.006-2008.050 reserved for expansion]

SUBCHAPTER B. ALTERNATIVE DISPUTE RESOLUTION

Sec. 2008.051. DEVELOPMENT AND USE OF PROCEDURES.

(a) Each state agency may develop and use alternative dispute resolution procedures. Alternative dispute resolution procedures developed and used by a state agency must be consistent with Chapter 154, Civil Practice and Remedies Code, and with the administrative procedure law, Chapter 2001. The State Office of Administrative Hearings may issue model guidelines for the use of alternative dispute resolution procedures by state agencies.

(b) If a state agency that is subject to Chapter 2001 adopts an alternative dispute resolution procedure, it may do so by rule.

Sec. 2008.052. SUPPLEMENTAL NATURE OF PROCEDURES.

(a) Alternative dispute resolution procedures developed and used under this chapter supplement and do not limit other dispute resolution procedures available at a state agency.

(b) This chapter may not be applied in a manner that denies a person a right granted under other state or federal law, including a right to an administrative or judicial hearing.

Sec. 2008.053. IMPARTIAL THIRD PARTIES. (a) A state agency may appoint a governmental officer or employee or a private individual to serve as an impartial third party in an alternative dispute resolution procedure. The agency's appointment of the impartial third party is subject to the approval of the parties, except that when a State Office of Administrative Hearings administrative law judge has issued an order referring a case to an alternative dispute resolution procedure under Section 2003.042(5), the administrative law judge may appoint the impartial third party for the parties if they cannot agree on an impartial third party within a reasonable period.

(b) The impartial third party must possess the qualifications required under Section 154.052, Civil Practice and Remedies Code.

(c) A state agency also may obtain the services of a qualified impartial third party through an agreement with the State Office of Administrative Hearings, the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or another state or federal agency or through a pooling agreement with several state agencies. The agreements may provide that the using agency or the parties will reimburse the furnishing agency, in kind or monetarily, for the full or partial cost of providing the qualified impartial third party.

(d) The impartial third party is subject to the standards and duties prescribed by Section 154.053, Civil Practice and Remedies Code, and has the qualified immunity prescribed by Section 154.055, Civil Practice and Remedies Code, if applicable.

Sec. 2008.054. CONFIDENTIALITY OF CERTAIN RECORDS AND COMMUNICATIONS. (a) Sections 154.053 and 154.073, Civil Practice and

Remedies Code, apply to the communications, records, conduct, and demeanor of the impartial third party and the parties.

(b) Notwithstanding Section 154.073(d), Civil Practice and Remedies Code:

(1) a communication relevant to the dispute, and a record of the communication, made between an impartial third party and the parties to the dispute or between the parties to the dispute during the course of an alternative dispute resolution procedure are confidential and may not be disclosed unless all parties to the dispute consent to the disclosure; and

(2) the notes of an impartial third party are confidential except to the extent that the notes consist of a record of a communication with a party and all parties have consented to disclosure in accordance with Subdivision (1).

(c) Subsection (b)(1) does not apply to a final written agreement to which a governmental entity is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter. Information in the final written agreement is subject to required disclosure, is excepted from required disclosure, or is confidential in accordance with other law.

(d) An impartial third party may not be required to testify in any proceedings relating to or arising out of the matter in dispute.

Sec. 2008.055. INTERAGENCY SHARING OF INFORMATION; CONSISTENCY OF PROCEDURES. (a) A state agency may share the results of its alternative dispute resolution program with other agencies and with the Center for Public Policy Dispute Resolution at The University of Texas School of Law. The center may collect and analyze the information and report its conclusions and useful information to state agencies and the legislature.

(b) State agencies should, to the extent feasible given the differences in agency purpose, jurisdiction, and constituency, adopt policies and procedures for alternative dispute resolution that are consistent with the policies and procedures of other state agencies.

SECTION 2. Section 2003.001, Government Code, is amended to read as follows:

Sec. 2003.001. DEFINITIONS. In this chapter:

(1) "Administrative law judge" means an individual who presides at an administrative hearing held under Chapter 2001.

(2) "Alternative dispute resolution procedure" has the meaning assigned by Section 2008.003.

(3) "Office" means the State Office of Administrative Hearings.

(4) [(3)] "State agency" means:

(A) a state board, commission, department, or other agency that is subject to Chapter 2001; and

(B) to the extent provided by Title 5, Labor Code, the Texas Workers' Compensation Commission.

SECTION 3. Section 2003.021(b), Government Code, is amended to read as follows:

(b) The office shall conduct all administrative hearings in contested cases under Chapter 2001 that are before a state agency that does not employ an individual whose only duty is to preside as a hearings officer over matters

related to contested cases before the agency and may conduct alternative dispute resolution procedures.

SECTION 4. Section 2003.042, Government Code, is amended to read as follows:

Sec. 2003.042. POWERS OF ADMINISTRATIVE LAW JUDGE.

(a) An administrative law judge may:

- (1) administer an oath;
- (2) take testimony;
- (3) rule on a question of evidence;

(4) subject to review by the state agency before which the contested case is brought, issue an order relating to discovery or another hearing or prehearing matter, including an order imposing a sanction that the agency may impose; and

(5) issue an order that refers a case to an alternative dispute resolution procedure, determines how the costs of the procedure will be apportioned, and appoints an impartial third party as described by Section 2008.053 to facilitate that procedure;

(6) issue a proposal for decision that includes findings of fact and conclusions of law;

(7) serve as an impartial third party as described by Section 2008.053 for a dispute referred by an administrative law judge, unless one of the parties objects to the appointment; and

(8) serve as an impartial third party as described by Section 2008.053 for a dispute referred by a government agency under a contract.

(b) An administrative law judge may not serve as an impartial third party for a dispute that the administrative law judge refers to an alternative dispute resolution procedure.

SECTION 5. Section 2003.047, Government Code, as added by Section 1, Chapter 106, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (j) to read as follows:

(j) An administrative law judge hearing a case on behalf of the commission may not, without the agreement of all parties, issue an order referring the case to an alternative dispute resolution procedure if the commission has already conducted an unsuccessful alternative dispute resolution procedure. If the commission has not already conducted an alternative dispute resolution procedure, the administrative law judge shall consider the commission's recommendation in determining whether to issue an order referring the case to the procedure.

SECTION 6. This Act takes effect September 1, 1997.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 694** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1548

Senator Galloway called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1548** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1548** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Galloway, Chair; Ogden, Lindsay, Gallegos, and Haywood.

SENATE BILL 381 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 381** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 381** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the civil and criminal consequences of a grant of deferred adjudication for a sexual offense or a sexually assaultive offense and to the prosecution of certain defendants charged with or convicted of those offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a) and (c), Section 5, Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Subsection (d) of this section, when in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision. A judge may place on community supervision under this section a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a defendant charged with a felony described by Section 13B(b), only if the judge makes a finding in open court that placing the defendant on community supervision is in the best interest of the victim. After placing the defendant on community supervision under this section, the judge shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision. If the information is provided orally, the judge must record and maintain the judge's

statement to the defendant. The failure of a judge to inform a defendant of possible consequences under Subsection (b) of this section is not a ground for reversal unless the defendant shows that he was harmed by the failure of the judge to provide the information. In a felony case, the period of community supervision may not exceed 10 years. For a defendant charged with a felony under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, and for a defendant charged with a felony described by Section 13B(b) of this article, the period of community supervision may not be less than five years. In a misdemeanor case, the period of community supervision may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article. The judge may impose a fine applicable to the offense and require any reasonable conditions of community supervision, including mental health treatment under Section 11(d) of this article, that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement. The provisions of Section 15 of this article specifying whether a defendant convicted of a state jail felony is to be confined in a county jail or state jail felony facility and establishing the minimum and maximum terms of confinement as a condition of community supervision apply in the same manner to a defendant placed on community supervision after pleading guilty or nolo contendere to a state jail felony. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge shall proceed to final adjudication as in all other cases.

(c) On expiration of a community supervision period imposed under Subsection (a) of this section, if the judge has not proceeded to adjudication of guilt, the judge shall dismiss the proceedings against the defendant and discharge him. The judge may dismiss the proceedings and discharge a defendant, other than a defendant charged with an offense described by Section 13B(b) of this article, prior to the expiration of the term of community supervision if in the judge's opinion the best interest of society and the defendant will be served. The judge may dismiss the proceedings and discharge a defendant charged with a felony described by Section 13B(b) of this article only if in the judge's opinion the best interest of society and the defendant will be served and the defendant has successfully completed at least two-thirds of the period of community supervision. Except as provided by Section 12.42(g), Penal Code, a [A] dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense. For any defendant who receives a dismissal and discharge under this section~~[- except that]:~~

(1) upon conviction of a subsequent offense, the fact that the defendant had previously received community supervision with a deferred adjudication of guilt shall be admissible before the court or jury to be considered on the issue of penalty;

(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received

community supervision with a deferred adjudication of guilt under this section in issuing, renewing, denying, or revoking a license under that chapter; and

(3) if the defendant is a person who has applied for registration to provide mental health or medical services for the rehabilitation of sex offenders, the Interagency Council on Sex Offender Treatment may consider the fact that the defendant has received community supervision under this section in issuing, renewing, denying, or revoking a license or registration issued by that council.

SECTION 2. Subsection (b), Section 3.03, Penal Code, is amended to read as follows:

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense;

(A) under Section 49.08; or

(B) ~~[(2) an offense]~~ for which a plea agreement was reached in a case in which the accused was charged with more than one offense under Section 49.08; or

(2) an offense:

(A) under Section 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense, and regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), committed against a victim younger than 17 years of age at the time of the commission of the offense, and regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section.

SECTION 3. Section 3.04, Penal Code, is amended by adding Subsection (c) to read as follows:

(c) The right to severance under this section does not apply to a prosecution for offenses described by Section 3.03(b)(2) unless the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which event the judge may order the offenses to be tried separately or may order other relief as justice requires.

SECTION 4. Section 12.42, Penal Code, is amended by adding Subsection (g) to read as follows:

(g) For the purposes of Subsection (d)(2):

(1) a defendant has been previously convicted of an offense listed under Subsection (d)(2)(B) if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Subsection (d)(2)(B) is a conviction of an offense listed under Subsection (d)(2)(B).

SECTION 5. Subsection (e), Section 3, Article 6252-13c.1, Revised Statutes, is amended to read as follows:

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d) of this section, the local law enforcement authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the victim is a child younger than 17 years of age and the basis on which the person is subject to registration is not an adjudication of delinquent conduct [~~or a deferred adjudication~~] and is not a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

SECTION 6. Subsection (f), Section 4, Article 6252-13c.1, Revised Statutes, is amended to read as follows:

(f) If the person moves to another municipality or county in this state, the department shall inform the applicable local law enforcement authority in the new area of the person's residence not later than the third day after the date on which the department receives information under Subsection (a) of this section. Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) of this section or under this subsection, the authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the victim is a child younger than 17 years of age and the basis on which the person is subject to registration is not an adjudication of delinquent conduct [~~or a deferred adjudication~~] and is not a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The local law enforcement authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

SECTION 7. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 1997.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend CSSB 381 as follows:

(1) On page 2, line 7, between "case" and ",", insert "and except as otherwise provided by this subsection".

(2) On page 2, line 12, between "years" and ".", insert "or more than 20 years".

Floor Amendment No. 1 on Third Reading

Amend CSSB 381 on third reading, in the Goodman second reading amendment, by striking the text of the amendment.

The amendments were read.

Senator Shapiro moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on SB 381 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; Harris, Duncan, Nelson, and Whitmire.

SENATE BILL 823 WITH HOUSE AMENDMENT

Senator Cain called SB 823 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend SB 823, in SECTION 1 of the bill, in proposed Section 141.008, Local Government Code (committee printing page 2, between lines 14 and 15), by inserting the following subsection:

(g) A payroll deduction made under this section may not be made for the purpose of a reportable activity and may not be paid, directly or indirectly, to a general-purpose committee or specific-purpose committee for any purpose. In this subsection, "reportable activity," "general-purpose committee," and "specific-purpose committee" have the meanings assigned by Section 25.001, Election Code.

The amendment was read.

Senator Cain moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 823** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Cain, Chair; Carona, Gallegos, Lucio, and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 966

Senator Barrientos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 966** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 966** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Nelson, Truan, Fraser, and Gallegos.

SENATE BILL 274 WITH HOUSE AMENDMENT

Senator Lucio called **SB 274** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 274** as follows:

- (1) On page 1, line 18, insert "subject to the authority of the Texas Higher Education Coordinating Board (THECB)" between "shall" and "offer".
- (2) On page 2, line 16, strike "entering".
- (3) On page 2, line 25, add a new Section 4 as follows and renumber subsequent sections appropriately:

SECTION 4. Not later than May 31, 1998, the THECB shall prepare an impact statement examining the initial implementation of this Act and shall deliver a copy of the statement to the board, to the board of trustees of Southmost Union Junior College District, and to the chair of the standing committee of each house of the legislature with primary jurisdiction over higher education.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 274**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Bill King, husband of Secretary of the Senate Betty King, and their family: daughter Kevin Ann Marcyes, son-in-law Richard Marcyes, and grandsons Griffin and Max Marcyes of Dallas.

The Senate welcomed its guests.

CONFERENCE COMMITTEE ON HOUSE BILL 2846

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2846** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2846** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Moncrief, Carona, Nixon, and Gallegos.

(Senator Brown in Chair)

SENATE RESOLUTION 842

Senator Zaffirini offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 190** to consider and take action on the following specific matters:

1. Senate Rule 12.03(1) is suspended to permit the committee to change the amount of the penalty imposed under Section 242.0665(c), Health and Safety Code, in Section 1.17 of the bill, so that the subsection reads as follows:

(c) An institution that corrects a violation under Subsection (a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection shall be equal to three times the amount of the penalty assessed but not collected under Subsection (a). The department is not required to provide the institution an opportunity to correct the subsequent violation under this section.

Explanation: This change is necessary to provide an appropriate penalty for a violation that occurs after an institution has exercised its right to correct a violation.

2. Senate Rule 12.03(2) is suspended to permit the committee to omit text from Section 242.603(d), Health and Safety Code, in Section 1.30 of the bill, so that the subsection reads as follows:

(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is discharged to home to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The institution may release a medication to a resident only on the written or verbal authorization of the attending physician.

Explanation: This change corrects a grammatical error by omitting an unnecessary "or."

3. Senate Rules 12.03(1) and (3) are suspended to permit the committee to change the text of Section 32.021(m), Human Resources Code, in Section 2.01 of the bill, so that the subsection reads as follows:

(m) Notwithstanding any provision of law to the contrary, the department shall terminate a nursing facility's provider agreement if the department has imposed required Category 2 or Category 3 remedies on the facility three times within a 24-month period unless the department makes an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of a facility. In this subsection, "Category 2 remedies" and "Category 3 remedies" have the meanings assigned by 42 C.F.R. Section 488.408.

Explanation: This change is necessary to provide appropriate references to the federal regulations to which the subsection refers.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1880 ADOPTED

Senator Truan called from the President's table the Conference Committee Report on **HB 1880**. The Conference Committee Report was read and was filed with the Senate on Thursday, May 22, 1997.

On motion of Senator Truan, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

Saturday, May 24, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SB 30, Relating to fraud and improper payments under the state Medicaid program and other welfare programs; to the creation of private cause of action for false claims for certain government payments; and to the creation of a criminal offense; providing penalties.
(Committee Substitute/Amended)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

VOTE RECONSIDERED

On motion of Senator Luna and by unanimous consent, the vote by which **HB 623** was finally passed yesterday was reconsidered.

HB 263, Relating to certification of public school educators.

Question—Shall **HB 623** be finally passed?

Senator Luna offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 623** (Senate committee printing) as follows:

1. On page 1, line 15 and 16, strike "on satisfactory completion of:" and substitute "upon satisfactory completion of an examination or other assessment of the educator's qualification."

2. Strike section (a)(1) of SECTION 1 (page 1, lines 17 and 18).

3. Strike section (a)(2) of SECTION 1 (page 1, lines 19 through 21).

4. Strike section (b) of SECTION 1 (page 1, lines 22 through 25).

The amendment was read and was adopted by unanimous consent.

HB 623 as amended was again finally passed by a viva voce vote.

SENATE BILL 298 WITH HOUSE AMENDMENT

Senator Ratliff called **SB 298** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 298** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to juvenile court detention orders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 54.01(h), Family Code, is amended to read as follows:

(h) A detention order extends to the conclusion of the disposition hearing, if there is one, but in no event for more than 10 working days. Further detention orders may be made following subsequent detention hearings. The initial detention hearing may not be waived but subsequent detention hearings may be waived in accordance with the requirements of Section 51.09 ~~[of this code]~~. Each subsequent detention order shall extend for no more than 10 working days, except that in a county that does not have a certified juvenile detention facility, as described by Section 51.12(a)(3), each subsequent detention order shall extend for no more than 15 working days.

SECTION 2. (a) The change in law made by this Act applies only to a child who is taken into custody for conduct that occurs on or after the effective date of this Act. Conduct violating a penal law of this state occurs on or after the effective date of this Act if every element of the violation occurs on or after that date.

(b) Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1997.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Ratliff, the Senate concurred in the House amendment to **SB 298** by a viva voce vote.

HOUSE BILL 827 ON SECOND READING

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 827, Relating to hunting and fishing licenses for certain disabled veterans.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 827 ON THIRD READING

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 827** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 827 was read third time and was passed by a viva voce vote.

SENATE BILL 370 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 370** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 370** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the continuation and functions of the Texas Department of Transportation, the abolition of the Texas Turnpike Authority, and the creation of regional tollway authorities; authorizing the issuance of bonds and the imposition of taxes; granting the power of eminent domain; and providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

**ARTICLE 1. TEXAS TRANSPORTATION COMMISSION;
TEXAS DEPARTMENT OF TRANSPORTATION**

SECTION 1.01. Section 201.204, Transportation Code, is amended to read as follows:

Sec. 201.204. SUNSET PROVISION. The Texas Department of Transportation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2009 [~~1997~~].

SECTION 1.02. Subsection (d), Section 201.051, Transportation Code, is amended to read as follows:

(d) Except as provided by Subsection (e), a person is not eligible for appointment as a member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the department;

(2) directly or indirectly owns or controls more than 10 percent interest in a business entity or other organization that is regulated by or receives funds from the department; ~~[or]~~

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(4) is registered, certified, or licensed by the department.

SECTION 1.03. Subsection (c), Section 201.057, Transportation Code, is amended to read as follows:

(c) If the director knows that a potential ground for removal exists, the director shall notify the commissioner of transportation of the ground, and the commissioner shall notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal relates to the commissioner of transportation, the director shall notify another member of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

SECTION 1.04. Subchapter B, Chapter 201, Transportation Code, is amended by adding Section 201.059 to read as follows:

Sec. 201.059. TRAINING ON DEPARTMENT AND CERTAIN LAWS RELATING TO DEPARTMENT. (a) To be eligible to take office as a member of the commission, a person appointed to the commission must complete at least one course of a training program that complies with this section.

(b) The training program must provide information to the person regarding:

- (1) this subchapter;
- (2) the programs operated by the department;
- (3) the role and functions of the department;
- (4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the department;
- (6) the results of the most recent formal audit of the department;
- (7) the requirements of the:
 - (A) open meetings law, Chapter 551, Government Code;
 - (B) open records law, Chapter 552, Government Code; and
 - (C) administrative procedure law, Chapter 2001, Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the commission.

SECTION 1.05. Section 201.102, Transportation Code, is amended to read as follows:

Sec. 201.102. SEPARATION [DEFINITION] OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making [define the respective] responsibilities of the commission and the management responsibilities of the director and staff of the department.

SECTION 1.06. Subsection (b), Section 201.107, Transportation Code, is amended to read as follows:

(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The report must comply with each reporting requirement applicable to financial reporting ~~[be in the form and filed in the time]~~ provided by the General Appropriations Act.

SECTION 1.07. Section 201.203, Transportation Code, is amended to read as follows:

Sec. 201.203. DEPARTMENT OFFICE~~[-RECORDS]~~. The department shall have its statewide headquarters office in Austin. ~~[The department shall keep all of its records in that office.]~~

SECTION 1.08. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.206 to read as follows:

Sec. 201.206. DONATIONS AND CONTRIBUTIONS. For the purpose of carrying out its functions and duties, the department may accept, from any source, a donation or contribution in any form, including realty, personalty, money, materials, or services.

SECTION 1.09. Subsections (a) and (b), Section 201.402, Transportation Code, are amended to read as follows:

(a) The director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department work force that meets federal and state laws, rules, and regulations, and instructions directly adopted under those laws, rules, or regulations ~~[guidelines]~~;

(3) procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state laws, rules, and regulations, and instructions directly adopted under those laws, rules, or regulations ~~[guidelines]~~ encourage a more equitable balance; and

(4) reasonable methods to appropriately address the areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated at least annually, be reviewed by the Texas Commission on Human Rights for compliance with Subsection (a)(1), and be filed with the governor's office.

SECTION 1.10. Subsections (a) and (b), Section 201.404, Transportation Code, are amended to read as follows:

(a) The director or the director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees in the department ~~[covering all full-time classified and exempt positions]~~. The program shall require intra-agency posting of all ~~[nonentry]~~ positions concurrently with any public posting.

(b) The director or the director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for department employees must be based on the system established under this subsection.

SECTION 1.11. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.705 to read as follows:

Sec. 201.705. PILOT PROJECT ON VEHICLE MAINTENANCE OUTSOURCING. (a) The department shall conduct a two-year pilot project to determine whether contracting with a private entity for maintenance and repair services of all department vehicles would be cost-effective.

(b) The study must be implemented in at least three of the department's districts. The districts in which the study is implemented must vary in geography and population.

(c) Any cost savings that result from the project shall be deposited to the credit of the state infrastructure bank account created under Subchapter D, Chapter 222.

(d) Not later than January 1, 2001, the department shall submit a report to the legislature on the results of the pilot program and any recommendations on the continuation or expansion of the pilot program.

(e) This section expires January 1, 2001.

SECTION 1.12. Section 201.801, Transportation Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) The department shall:

(1) keep an information file about each written complaint filed with the department that the department has the authority to resolve; and

(2) provide the person who filed the complaint, and each person or entity that is the subject of the complaint, information about the department's policies and procedures relating to complaint investigation and resolution.

(e) With regard to each complaint filed with the department, the department shall keep the following information:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) if the department takes no action on the complaint, an explanation of the reasons that no action was taken.

SECTION 1.13. Section 201.802, Transportation Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The director [department] shall prepare and maintain a written plan that describes the manner in which a person who does not speak English or who has a physical, mental, or developmental disability is provided reasonable access to the department's programs.

(c) The department shall comply with each applicable law of the United States or this state that relates to program or facility accessibility.

SECTION 1.14. Subchapter K, Chapter 201, Transportation Code, is amended by adding Section 201.905 to read as follows:

Sec. 201.905. MULTIMODAL ROAD USE. (a) The department shall conduct a comprehensive analysis of the multimodal use of roads and highways in the state highway system. The analysis shall include the collection of data on users' concerns about road conditions and actual and potential use patterns of roads or highways.

(b) After the analysis required by Subsection (a) is completed, the department shall initiate and coordinate a campaign to help increase public awareness of traffic safety issues.

(c) The department shall initiate a program of continuing community involvement sessions to help other state agencies, local decision-makers, interest groups, and the general public improve the state's comprehensive transportation system to include all modes of transportation.

SECTION 1.15. Chapter 201, Transportation Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. ELECTRONIC ISSUANCE OF LICENSES

Sec. 201.931. DEFINITIONS. In this subchapter:

(1) "Digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

(2) "License" includes:

(A) a permit issued by the department that authorizes the operation of a vehicle and its load or a combination of vehicles and load exceeding size or weight limitations;

(B) motor carrier registration issued under Article 6675c, Revised Statutes;

(C) a vehicle storage facility license issued under Article 6687-9a, Revised Statutes;

(D) a license or permit for outdoor advertising issued under Chapter 391 or 394;

(E) a salvage motor vehicle dealer and agent license issued under Article 6687-1a, Revised Statutes;

(F) specially designated or specialized license plates issued under Subchapters E and F, Chapter 502; and

(G) an apportioned registration issued according to the International Registration Plan under Section 502.054.

Sec. 201.932. APPLICATION FOR AND ISSUANCE OF LICENSE.

(a) The commission may by rule provide for the filing of a license application and the issuance of a license by electronic means.

(b) The commission may limit applicant eligibility under Subsection (a) if the rules include reasonable eligibility criteria.

Sec. 201.933. DIGITAL SIGNATURE. (a) A license application received by the department is considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the license in accordance with Subsection (b).

(b) The department may only accept a digital signature used to authenticate a license application under procedures that:

(1) comply with any applicable rules of another state agency having jurisdiction over department use or acceptance of a digital signature; and

(2) provide for consideration of factors that may affect a digital signature's reliability, including whether a digital signature is:

- (A) unique to the person using it;
- (B) capable of independent verification;
- (C) under the sole control of the person using it; and
- (D) transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

Sec. 201.934. PAYMENT OF FEES. The commission may adopt rules regarding the method of payment of a fee for a license issued under this subchapter. The rules may authorize the use of electronic funds transfer or a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department. The rules may require the payment of a discount or service charge for a credit card payment in addition to the fee.

SECTION 1.16. Subchapter C, Chapter 202, Transportation Code, is amended by adding Section 202.060 to read as follows:

Sec. 202.060. LIVING LOGOS; PILOT PROJECT. (a) The commission may adopt rules implementing a pilot project for the leasing of state highway right-of-way, subject to any applicable federal regulation of outdoor advertising, as a location or locations for commercial advertising by means of a floral mosaic living logo.

(b) Rules adopted under this section shall:

- (1) provide for the award of a lease in a manner that maximizes revenue to the state;
- (2) regulate the content, composition, placement, installation, and maintenance of a floral mosaic living logo;
- (3) set a bond for faithful performance of the lessee;
- (4) provide for the public safety;
- (5) ensure that installation and maintenance of a floral mosaic living logo will not interfere with access to, or be inconsistent with the use of, abutting property; and
- (6) include such other matters as may be necessary to protect the integrity of the involved highway.

(c) A floral mosaic living logo installed or placed under this section may not contain a message, symbol, or trademark that resembles an official traffic-control device.

(d) This section applies to state highway right-of-way in a county with a population of 500,000 or more.

SECTION 1.17. Subchapter B, Chapter 222, Transportation Code, is amended by adding Section 222.034 to read as follows:

Sec. 222.034. DISTRIBUTION OF FEDERAL FUNDS. (a) Federal aid for transportation purposes that is administered by the commission shall be distributed to the various parts of the state for a funding cycle through the selection of highway projects in the state in a manner that is consistent with federal formulas that determine the amount of federal aid for transportation purposes received by the state. A distribution under this subsection does not include deductions made for the state infrastructure bank or other federal funds reallocated by the federal government.

(b) The commission may vary from the distribution procedure provided by Subsection (a) if it issues a ruling or minute order identifying the variance and providing a particular justification for the variance.

SECTION 1.18. Subchapter C, Chapter 222, Transportation Code, is amended by adding Section 222.053 to read as follows:

Sec. 222.053. RELIEF FROM LOCAL MATCHING FUNDS REQUIREMENT. (a) In this section, "economically disadvantaged county" means a county that has, in comparison to other counties in the state:

- (1) below average per capita taxable property value;
- (2) below average per capita income; and
- (3) above average unemployment.

(b) Except as provided by Subsection (c), the commission may require, request, or accept from a political subdivision matching or other local funds, rights-of-way, utility adjustments, additional participation, planning, documents, or any other local incentives to make the most efficient use of its highway funding.

(c) In evaluating a proposal to construct, maintain, or extend a highway or for another type of highway project in a political subdivision that consists of all or a portion of an economically disadvantaged county, the commission:

(1) may not consider the absence or value of local incentives provided under Subsection (b) or the value of a benefit received by the state in an agreement under Section 791.031, Government Code, beyond the minimum required local matching funds; and

(2) shall adjust the minimum local matching funds requirement after evaluating the political subdivision's effort and ability to meet the requirement.

(d) In making an adjustment under Subsection (c)(2), the commission may use its in-kind resources and any other available resources to help satisfy a federal requirement.

(e) The commission shall report annually to the governor, the lieutenant governor, and the speaker of the house of representatives on the use of matching funds and local incentives and the ability of the commission to ensure that political subdivisions located in economically disadvantaged counties have equal ability to compete for highway funding with political subdivisions in counties that are not economically disadvantaged.

SECTION 1.19. Subsection (c), Section 202.052, Transportation Code, is amended to read as follows:

(c) The department shall charge not less than fair market value for the highway asset, payable in cash, services, tangible or intangible property, or any combination of cash, services, or property.

SECTION 1.20. Chapter 202, Transportation Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TELECOMMUNICATIONS FACILITIES

Sec. 202.091. DEFINITION. In this subchapter, "telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, or sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

Sec. 202.092. USE OF DEPARTMENT FACILITIES. Notwithstanding any other law, a telecommunications provider may not place or maintain its facilities or otherwise use improvements, including structures, medians, conduits, or telecommunications equipment or lines, constructed or installed by the state as components of the state highway system except by a lease under Section 202.052 or an agreement under Section 202.093.

Sec. 202.093. AGREEMENT. (a) Notwithstanding any other law, the department may enter into an agreement with a telecommunications provider allowing the provider, for the provider's commercial purposes, to:

(1) place the provider's telecommunications facilities within the median of a divided state highway; or

(2) place lines within or otherwise use telecommunications facilities owned or installed by the state in or on the improved portion of a state highway, including a median, structures, equipment, conduits, or any other component of the highway facilities constructed or owned by the department.

(b) An agreement entered into under Subsection (a) may provide for compensation between the department and the telecommunications provider in the form of cash or the shared use of facilities.

Sec. 202.094. COMPETITIVE SEALED PROPOSAL. (a) Before entering into an agreement with a telecommunications provider under this subchapter, the department shall follow a procedure using competitive sealed proposals.

(b) The department shall solicit proposals by a request for proposals and shall publish notice of the request in at least two newspapers of general circulation and in the Texas Register.

(c) The proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. After a contract is awarded, all proposals that have been submitted shall be open for public inspection subject to Subchapter C, Chapter 552, Government Code.

(d) The department may discuss an acceptable or potentially acceptable proposal with an offeror to assess the offeror's ability to meet the solicitation requirements. After the submission of a proposal but before making an award, the department may permit the offeror to revise the proposal in order to obtain the best final offer. The department may not disclose any information derived from proposals submitted from competing offerors in conducting discussions under this section. The department shall provide each offeror with an equal opportunity for discussion and revision of proposals.

(e) The department shall make a written award of a contract to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors in the request for proposals, except that if the department finds that none of the offers is acceptable, it shall refuse all offers. The contract file must state in writing the basis on which the award is made.

Sec. 202.095. APPLICABILITY. (a) Subtitle D, Title 10, Government Code, does not apply to a procurement under this subchapter.

(b) This subchapter does not limit a telecommunications provider from placing lines or facilities in the unimproved portion of state highway right-of-way to the extent authorized by applicable law.

Sec. 202.096. REVENUE. The department shall deposit in the state highway fund any revenue received under this subchapter.

Sec. 202.097. RULEMAKING. The commission shall adopt rules for the implementation of this subchapter.

SECTION 1.21. Chapter 222, Transportation Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. STATE INFRASTRUCTURE BANK

Sec. 222.071. DEFINITIONS. In this subchapter:

(1) "Bank" means the state infrastructure bank account.

(2) "Construction" has the meaning assigned by 23 U.S.C. Section 101.

(3) "Federal act" means Section 350 of the National Highway System Designation Act of 1995 (Pub. L. No. 104-59).

(4) "Federal-aid highway" has the meaning assigned by 23 U.S.C. Section 101.

(5) "Qualified project" includes:

(A) the construction of a federal-aid highway;

(B) a transit project under 49 U.S.C. Sections 5307, 5309, and 5311; or

(C) for the expenditure of secondary funds, a project eligible for assistance under Title 23 or Title 49, United States Code.

(6) "Secondary funds" includes:

(A) the repayment of a loan or other assistance that is provided with money deposited to the credit of the bank; and

(B) investment income generated by secondary funds deposited to the credit of the bank.

Sec. 222.072. STATE INFRASTRUCTURE BANK. (a) The state infrastructure bank is an account in the state highway fund. The bank is administered by the commission.

(b) Federal funds received by the state under the federal act, matching state funds in an amount required by that act, proceeds from bonds issued under Section 222.075, money saved as a result of contracting with a private entity for maintenance and repair services for department vehicles, secondary funds, and other money received by the state that is eligible for deposit in the bank may be deposited into the bank and used only for the purposes described in this subchapter.

Sec. 222.073. PURPOSES OF INFRASTRUCTURE BANK. The commission shall use money deposited in the bank to:

(1) encourage public and private investment in transportation facilities, including facilities that contribute to the multimodal and intermodal transportation capabilities of the state; and

(2) develop financing techniques designed to:

(A) expand the availability of funding for transportation projects and to reduce direct state costs;

(B) maximize private and local participation in financing projects; and

(C) improve the efficiency of the state transportation system.

Sec. 222.074. FORM OF ASSISTANCE. (a) To further a purpose described by Section 222.073, the commission may use money deposited to the credit of the bank to provide financial assistance to a public or private entity for a qualified project to:

- (1) extend credit by direct loan;
- (2) provide credit enhancements;
- (3) serve as a capital reserve for bond or debt instrument financing;
- (4) subsidize interest rates;
- (5) insure the issuance of a letter of credit or credit instrument;
- (6) finance a purchase or lease agreement in connection with a transit project;
- (7) provide security for bonds and other debt instruments; or
- (8) provide methods of leveraging money that have been approved by the United States secretary of transportation and relate to the project for which the assistance is provided.

(b) Financial assistance to a private entity under Subsection (a) shall be limited to a qualified project that:

- (1) provides transportation services or facilities that provide a demonstrated public benefit; or
- (2) is constructed or operated in cooperation with a state agency or political subdivision in accordance with an agreement between that agency or political subdivision and the private entity.

Sec. 222.075. REVENUE BONDS. (a) The commission may issue revenue bonds for the purpose of providing money for the bank.

(b) Except as provided by Subsection (c), the commission may issue revenue bonds or revenue refunding bonds under this section without complying with any other law applicable to the issuance of bonds.

(c) Notwithstanding any other provision of this section, the following laws apply to bonds issued by the commission:

- (1) Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes);
- (2) Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes);
- (3) the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes);
- (4) Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes);
- (5) Article 3, Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes); and
- (6) Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(d) The revenue bonds are special obligations of the commission payable only from income and receipts of the bank as the commission may designate. The income and receipts include principal of and interest paid and to be paid on acquired obligations, other designated obligations held by the bank, or income from accounts created within the bank.

(e) The revenue bonds do not constitute a debt of the state or a pledge of the faith and credit of the state.

(f) The commission may require participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations.

(g) Revenue bonds issued under this section shall be authorized by order of the commission and shall have the form and characteristics and bear the designations as are provided in the order.

(h) Revenue bonds shall:

(1) be dated;

(2) bear interest at the rate or rates authorized by law;

(3) mature at the time or times, serially, as term, revenue bonds, or otherwise not more than 50 years after their dates;

(4) be called before stated maturity on the terms and at the prices, be in the denominations, be in the form, either coupon or registered, carry registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or one denomination for bonds of other denominations, and successive exchange of registered revenue bonds for coupon revenue bonds, be executed in the manner, and be payable at the place or places inside or outside the state, as provided in the order;

(5) be issued in temporary or permanent form;

(6) be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the commission to be the most advantageous reasonably obtainable; and

(7) be issued on a parity with and be secured in the manner as other revenue bonds authorized to be issued by this section or be issued without parity and secured differently from other revenue bonds.

(i) All proceedings relating to the issuance of revenue bonds issued under this section shall be submitted to the attorney general for examination. On determining that the revenue bonds have been authorized in accordance with law, the attorney general shall approve the revenue bonds, and the revenue bonds shall be registered by the comptroller. After the approval and registration, the revenue bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

(j) The proceeds received from the sale of revenue bonds shall be deposited in the bank and invested in the manner provided for other funds deposited under this subchapter.

Sec. 222.076. SEPARATE SUBACCOUNTS. The bank shall consist of at least two separate subaccounts, a highway subaccount and a transit subaccount.

Sec. 222.077. REPAYMENT TERMS; DEPOSIT OF REPAYMENTS; INVESTMENT INCOME. (a) Any funds disbursed through the state infrastructure bank must be repaid on terms determined by the commission that comply with the federal act.

(b) Notwithstanding any other law to the contrary:

(1) the repayment of a loan or other assistance provided with money deposited to the credit of a subaccount in the bank shall be deposited in that subaccount; and

(2) investment income generated by money deposited to the credit of a subaccount in the bank shall be:

(A) credited to that subaccount;

(B) available for use in providing financial assistance under this subchapter; and

(C) invested in United States Treasury securities, bank deposits, or other financing instruments approved by the United States secretary of transportation to earn interest and enhance the financing of projects assisted by the bank.

(c) The commission shall administer the bank in compliance with the federal act and any applicable federal regulation or guideline.

(d) The commission by rule shall:

(1) implement this subchapter; and

(2) establish eligibility criteria for an entity applying for financial assistance from the bank.

Sec. 222.078. REPORT TO LEGISLATURE. (a) Not later than January 1, 2001, the department shall submit a report to the legislature on the status of projects funded by the state infrastructure bank and the use of the bank. The report must include information about:

(1) the financial and operational status of projects assisted by the bank;

(2) the financial condition of the bank, including fund balances;

(3) the cumulative value of investments made; and

(4) the extent to which projects assisted by the bank have aided the state in meeting the state's transportation needs.

(b) This section expires January 1, 2001.

SECTION 1.22. Subchapter A, Chapter 223, Transportation Code, is amended by adding Sections 223.012 and 223.013 to read as follows:

Sec. 223.012. CONTRACTOR PERFORMANCE. The department shall:

(1) develop a schedule for liquidated damages that accurately reflects the costs associated with project completion delays, including administrative and travel delays; and

(2) review contractor bidding capacity to ensure that contractors meet each quality and timeliness standard established by the commission.

Sec. 223.013. ELECTRONIC BIDDING SYSTEM. (a) The department may establish an electronic bidding system for highway construction and maintenance contracts.

(b) The system must permit a qualified vendor to electronically submit a bid, including any contract, signature, or verification of a guaranty check by a financial institution.

(c) That part of Section 223.004(a) requiring a bid to be opened at a public hearing of the commission does not apply to an electronically submitted bid. A copy of each electronically submitted bid shall be publicly posted within 48 hours after bids are opened.

(d) After the electronic bidding system is established, the department shall take the actions necessary to recover the department's costs of manually processing bids from a person who does not submit an electronic bid.

SECTION 1.23. Section 223.041, Transportation Code, is amended to read as follows:

Sec. 223.041. ENGINEERING AND DESIGN CONTRACTS. (a) The department shall use private sector engineering-related services to assist in accomplishing its activities in providing transportation projects. For the purpose of this section, engineering-related services means engineering, land surveying, environmental, transportation feasibility and financial, architectural, real estate appraisal, and materials laboratory services. These engineering-related services are for highway improvements, right-of-way acquisition, and aviation improvements [department's policy regarding the regular use of private sector professional services for preliminary and construction engineering and engineering design shall achieve a balance between the use of department employees and the use of private contractors if the costs are equivalent].

(b) The department, in setting the level of expenditures in these engineering-related activities that will be paid to the private sector providers, shall index the level of expenditures from the amount set by rider in the General Appropriations Act enacted by the 75th Legislature at its regular session in 1997, expressed as a percentage of the total funds appropriated in Strategy A.1.1. Plan/Design/Manage [office of the state auditor shall determine relevant costs to be considered under Subsection (a)].

(c) Beginning in fiscal year 2000, the department shall increase its expenditures to private sector providers for engineering-related services at least one percentage point per year until the expenditure level in all strategies paid to private sector providers for all department engineering-related services for transportation projects reaches a goal of 35 percent of funds appropriated in Strategy A.1.1. Plan/Design/Manage of the General Appropriations Act enacted by the 75th Legislature at its regular session in 1997.

(d) The commission may provide for hearings at which private sector complaints relating to the selection process are heard.

SECTION 1.24. Chapter 224, Transportation Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. CONGESTION MITIGATION PROJECTS AND FACILITIES

Sec. 224.151. DEFINITIONS. In this subchapter:

(1) "Congestion" means the level at which transportation system performance is no longer acceptable because of traffic interference. The level of acceptable system performance may vary by type of transportation facility, geographic location, or time of day.

(2) "Congestion mitigation" means projects and facilities used to reduce congestion to promote the use of carpools and vanpools, improve air quality, conserve fuel, and enhance the use of existing highways and facilities on the state highway system.

(3) "High occupancy vehicle" means a bus or other motorized passenger vehicle such as a carpool or vanpool vehicle used for ridesharing purposes and occupied by a specified minimum number of persons.

(4) "High occupancy vehicle lane" means one or more lanes of a highway or an entire highway where high occupancy vehicles, trucks, or emergency vehicles in any combination are given at all times, or at regularly scheduled times, a priority or preference over some or all other vehicles moving in the general stream of all highway traffic.

(5) "Motor vehicle" has the meaning assigned by Section 522.003.

(6) "Transportation corporation" means a transportation corporation created by the state under Chapter 431.

Sec. 224.152. PURPOSE. (a) Subject to the availability of state and federal funds, it is the intent of the legislature to further the purposes of the United States Congress as expressed in 23 U.S.C. Sections 134, 135, 146, and 149 and in Section 1012(b) of Pub. L. No. 102-240 to conserve fuel, decrease traffic congestion during rush hours, improve air quality, develop innovative techniques to finance transportation projects, and enhance the use of existing highways and facilities.

(b) The legislature declares that it is necessary, to further the purposes described by Subsection (a), to provide for the participation of the commission and the department in projects and facilities for the purpose of congestion mitigation.

Sec. 224.153. HIGH OCCUPANCY VEHICLE LANES AUTHORIZED.

(a) The commission may designate and the department or a transportation corporation may design, construct, operate, or maintain one or more lanes on a multi-lane highway facility as dedicated high occupancy vehicle lanes on the state highway system.

(b) The commission may spend or allocate any available funds to:

(1) designate highway lanes as preferential carpool or high occupancy vehicle lanes and create facilities to relieve traffic congestion; or

(2) make any other designation of a dedicated high occupancy vehicle lane on the state highway system.

Sec. 224.154. CONGESTION MITIGATION. (a) Notwithstanding any law of this state relating to charging tolls on existing free public highways, the commission may by order authorize the department or a transportation corporation to charge a toll for the use of one or more lanes of a state highway facility, including a high occupancy vehicle lane, for the purposes of congestion mitigation. The commission may enter into an agreement with a regional tollway authority described in Chapter 366, or a transit authority described in Chapter 451, 452, or 453, to charge a toll for the use of one or more lanes of a state highway facility under this subsection.

(b) The commission may by order set the amount of toll charges. Any toll charges shall be imposed in a reasonable and nondiscriminatory manner.

(c) For purposes of congestion mitigation projects and facilities under this subchapter, the department, a transportation corporation, and a regional tollway authority or a transit authority with whom the commission has an agreement under this section are successor agencies to the Texas Turnpike Authority for purposes of Section 52-b, Article III, Texas Constitution.

(d) Revenue generated from toll charges and administrative fees assessed by the department in connection with a congestion mitigation facility shall be deposited in the state highway fund and may be used only for

projects for the improvement of the state highway system. Revenue generated from toll charges and administrative fees assessed by an entity with whom the commission contracts under this section shall be allocated as required by the terms of the agreement.

(e) The powers granted by this section are subject to the restrictions of 23 U.S.C. Section 129.

Sec. 224.155. FAILURE OR REFUSAL TO PAY TOLL CHARGES. Any motor vehicle other than a police or emergency vehicle that is driven or towed through a toll collection facility shall pay the proper toll.

Sec. 224.156. ADMINISTRATIVE FEE; NOTICE. (a) In the event of nonpayment of the proper toll, on issuance of proper notice of nonpayment, the registered owner of the nonpaying vehicle is legally bound to pay both the proper toll and an administrative fee.

(b) The commission by rule and a transportation corporation by order of its board of directors may respectively fix an administrative fee, not to exceed \$100, to recover the cost of collecting an unpaid toll. The notice of nonpayment to the registered owner shall be sent by the department by first-class mail not later than 30 days after the date of the alleged failure to pay and may require payment not sooner than 30 days after the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment.

(c) If the registered owner of the vehicle fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment issued under this section, the registered owner shall be cited as for other traffic violations for the nonpayment, and the owner is legally bound to pay a fine, not to exceed \$250, for each event of nonpayment. Neither the legal obligation to pay nor the actual payment of the fine affects the legal duty of the owner for any other fine or penalty prescribed by law.

Sec. 224.157. PROSECUTIONS. (a) In the prosecution of a violation under Sections 224.155 and 224.156, proof that the vehicle passed through a toll collection facility without payment of the proper toll, together with proof that the defendant was the registered owner of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner.

(b) The court of the local jurisdiction in which the violation occurred may assess and collect the fine in addition to any court costs. The court shall also collect the proper toll and administrative fee and forward the toll and fee to the department or to the transportation corporation.

(c) It is a defense to nonpayment under Section 224.155 or 224.156 that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

- (1) the occurrence of the failure to pay; or
- (2) eight hours after discovery of the theft.

(d) A registered owner who is a lessor of a vehicle concerning which a notice of nonpayment was issued under Section 224.156 is not liable in connection with that notice of nonpayment if, not later than 30 days after the date the notice of nonpayment is mailed, the registered owner provides to the

department or the transportation corporation a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment, with the name and address of the lessee clearly legible. Failure to provide this information within the period prescribed renders the lessor liable as the registered owner. If the lessor provides the required information within the period prescribed, the lessee of the vehicle on the date of the violation is considered to be the owner of the vehicle for purposes of this subchapter and is subject to prosecution for failure to pay the proper toll as if the lessee were the registered owner, if the department or the transportation corporation sends a notice of nonpayment to the lessee by first-class mail within 30 days after the date of receipt of the required information from the lessor.

Sec. 224.158. USE AND RETURN OF TRANSPONDERS. (a) For purposes of this section, a "transponder" means a device, placed on or within a motor vehicle, that is capable of transmitting information used to assess or collect tolls. A transponder is "insufficiently funded" when there are no remaining funds in the account in connection with which the transponder was issued.

(b) Any law enforcement officer of the Department of Public Safety has the authority to seize a stolen or insufficiently funded transponder and to return it to the department or the transportation corporation, except that an insufficiently funded transponder may not be seized sooner than 30 days after the date the department or the transportation corporation has sent a notice of delinquency to the holder of the account.

Sec. 224.159. ADOPTION OF RULES; PRESCRIBE FORMS. The commission shall adopt rules and prescribe forms to administer this subchapter.

SECTION 1.25. Section 431.073, Transportation Code, is amended to read as follows:

Sec. 431.073. PROJECT IN COUNTY OF 500,000 [1.5 MILLION] OR MORE OR ADJACENT COUNTY. (a) This section applies only to a corporation [in existence on August 31, 1991,] that was created by the state or one or more counties or municipalities to implement a transportation project in:

- (1) a county with a population of 500,000 [1.5 million] or more; or
- (2) a county adjacent to a county described by Subdivision (1).

(b) If approved and authorized by the commission, a corporation created by the state has the rights, powers, privileges, authority, and functions given the department under this title to:

(1) construct, improve, operate, and maintain high occupancy vehicle lanes; and

(2) charge a toll for the use of one or more high occupancy vehicle lanes for the purpose of congestion mitigation.

(c) A corporation in existence on August 31, 1991, has the powers, rights, and privileges of a corporation created under Chapter 11, Title 32, Revised Statutes, as that law existed on August 31, 1991, except that the required right-of-way of any highway, road, street, or turnpike may be of the width required or approved by the commission or each governing body creating the corporation.

SECTION 1.26. Section 224.033, Transportation Code, is amended to read as follows:

Sec. 224.033. COUNTY IMPROVEMENT OF STATE SYSTEM.

(a) The ~~commission may enter into an agreement with the~~ commissioners court of a county ~~[may contract with the department]~~ for the improvement by the county of the state highway system.

(b) In this section, "improvement" means construction, reconstruction, maintenance, and the making of a necessary plan or survey before beginning construction, reconstruction, or maintenance and includes a project or activity[:

~~[(1)]~~ appurtenant to a state highway and including drainage facilities, surveying, traffic counts, driveways, landscaping, signs, lights, or guardrails;~~or~~

~~[(2)] involving maintenance of a state highway and appurtenant facilities].~~

SECTION 1.27. Section 251.014, Transportation Code, is amended to read as follows:

Sec. 251.014. COUNTY IMPROVEMENT OF STATE HIGHWAY.

(a) The commissioners court of a county may ~~enter into an agreement~~ [contract] with the ~~commission~~ [department] for the county to carry out a project or activity for the improvement of a segment of the state highway system.

(b) In this section, "improvement" means construction, reconstruction, maintenance, and the making of a necessary plan or survey before beginning construction, reconstruction, or maintenance and includes a [if the] project or activity[:

~~[(1)] is~~ appurtenant to a state highway, including surveying, making a traffic count, or landscaping or an activity relating to a drainage facility, driveway, sign, light, or guardrail;~~or~~

~~[(2)] involves maintenance of a state highway or appurtenant facility].~~

SECTION 1.28. Chapter 455, Transportation Code, is amended by adding Section 455.0015 to read as follows:

Sec. 455.0015. TRANSPORTATION NEEDS OF CLIENTS OF HEALTH AND HUMAN SERVICES AGENCIES. In performing its public transportation planning and funding activities, the department shall consider and include the transportation needs of those persons who are clients of the health and human services agencies of this state.

SECTION 1.29. Section 623.074, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The department may by rule authorize an applicant to submit an application electronically. An electronically submitted application shall be considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the application. For purposes of this subsection, "digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

SECTION 1.30. (a) Not later than April 30, 1998, the Texas Department of Transportation shall complete a study of alternative routes for a second transportation link from the mainland to South Padre Island that would:

(1) provide an alternative for emergency ingress or egress for permanent residents and daily and overnight visitors;

(2) better disperse the traffic on the island to reduce congestion at the southern end of the island;

(3) reduce the travel time and cost by providing a more direct route to the island from upper Rio Grande Valley locations and provide relief to traffic congestion in municipalities along existing highway routes; and

(4) give priority to environmentally friendly alternative options, such as a light-rail highway combination, that could be anchored at the Valley International Airport and the South Padre Convention Center or at other logical destinations.

(b) The Texas Department of Transportation shall, not later than December 31, 1998, report to the legislature on the department's plans to implement the recommendations of the study described by Subsection (a) of this section.

SECTION 1.31. Subsection (b), Section 201.109, Transportation Code, is amended to read as follows:

(b) In carrying out this section, the commission shall provide for:

(1) maximizing the generation of revenue from existing assets of the department, including real estate;

(2) increasing the role of the private sector and public-private projects in the leasing of real estate and other assets in the development of highway projects;

(3) setting and attempting to meet annual revenue enhancement goals;

(4) reporting on the progress in meeting revenue enhancement goals in the department's annual report; [and]

(5) contracting for an independent audit of the department's management and business operations in 2001 and each 12th year after 2001; and

(6) developing a cost-benefit analysis between the use of local materials previously incorporated into roadways versus use of materials blended or transported from other sources.

SECTION 1.32. Subchapter C, Chapter 791, Government Code, is amended by adding Section 791.031 to read as follows:

Sec. 791.031. TRANSPORTATION INFRASTRUCTURE. (a) This section applies only to a local government, other than a school district, that is authorized to impose ad valorem taxes on real property.

(b) The Texas Department of Transportation may enter into an interlocal contract with a local government for the financing of transportation infrastructure that is constructed or that is to be constructed in the territory of the local government by the department in a corridor of land on which no existing state or federal highway is located.

(c) The agreement must include:

(1) the duration of the agreement, which may not exceed 12 years;

(2) a description of each transportation infrastructure project or proposed project;

(3) a map showing the location of each project and property included in the contract; and

(4) an estimate of the cost of each project.

(d) The agreement may establish one or more transportation infrastructure zones. The Texas Department of Transportation and the local government may agree that at one or more specified times, the local government will pay to the Texas Department of Transportation an amount that is calculated on the basis of increased ad valorem tax collections in a zone that are attributable to increased values of property located in the zone resulting from an infrastructure project. The amount may not exceed an amount that is equal to 30 percent of the increase in ad valorem tax collections for the specified period.

(e) Money received by the Texas Department of Transportation under this section may be used:

(1) to provide a local match for the acquisition of right-of-way in the territory of the local government; or

(2) for design, construction, operation, or maintenance of transportation facilities in the territory of the local government.

SECTION 1.33. As soon as practicable, the Texas Department of Transportation, using funds authorized by minute order 106860 passed by the Texas Transportation Commission on June 18, 1996, shall conduct a study to explore whether it is practical for the department to develop and carry out a statewide Type II Noise Abatement Program.

ARTICLE 2. OUTDOOR ADVERTISING

SECTION 2.01. Section 391.065, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may not adopt a rule under this chapter that restricts competitive bidding or advertising by the holder of a license issued under this chapter other than a rule to prohibit false, misleading, or deceptive practices. The limitation provided by this section applies only to rules relating to the occupation of outdoor advertiser and does not affect the commission's power to regulate the orderly and effective display of outdoor advertising under this chapter. A rule to prohibit false, misleading, or deceptive practices may not:

(1) restrict the use of:

(A) any legal medium for an advertisement;

(B) the license holder's advertisement under a trade name; or

(C) the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or

(2) relate to the size or duration of an advertisement by the license holder.

SECTION 2.02. Section 391.062, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) At least 30 days before the date on which a person's license expires, the commission shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the commission.

SECTION 2.03. Subsection (a), Section 391.066, Transportation Code, is amended to read as follows:

(a) The commission may revoke or suspend a license issued under this subchapter or place on probation a license holder whose license is suspended if the license holder violates this chapter or a rule adopted under this chapter. If the suspension of the license is probated, the department may require the license holder to report regularly to the commission on any matter that is the basis of the probation.

SECTION 2.04. Subchapter D, Chapter 391, Transportation Code, is amended by adding Sections 391.097 and 391.098 to read as follows:

Sec. 391.097. MAJOR AGRICULTURAL INTEREST SIGN. (a) In this section:

(1) "Eligible rural highway" means a highway that:

(A) has noncontrolled access; and

(B) is outside the corporate limits of a municipality.

(2) "Major agricultural interest" means a farm, ranch, winery, nursery, greenhouse, or other facility that:

(A) sows or cultivates an agricultural product;

(B) devotes a minimum of five acres of land to the production of the agricultural product;

(C) markets the product on the premises as a retail sale of the product; and

(D) conducts public tours of the grounds or facilities.

(b) The commission shall enter into one or more contracts with an individual, firm, group, or association in this state to erect and maintain major agricultural interest signs at appropriate locations along eligible rural highways.

(c) A contract under this section shall provide for:

(1) the assessment of fees to be paid to a contractor by a commercial establishment of a major agricultural interest; and

(2) remittance to the department of a portion of the fees collected by the contractor in an amount sufficient to recover the department's costs of administering the program.

(d) To be eligible to have its name displayed on a major agricultural interest sign, a major agricultural interest must be located within five miles of an intersection with an eligible rural highway.

(e) A major agricultural interest sign must:

(1) have a brown background with a white reflective legend and border;

(2) not contain a corporate or trademark symbol; and

(3) not contain a message, symbol, or trademark that resembles an official traffic control device.

(f) The commission shall:

(1) regulate the content, composition, placement, erection, and maintenance of major agricultural interest signs and supports on an eligible rural highway right-of-way; and

(2) adopt rules necessary to administer and enforce this section.

Sec. 391.098. VARIANCES. (a) The commission shall authorize the director to grant variances, on a case-by-case basis, to the eligibility,

location, or placement of specific logo signs, major agricultural interest signs, and major shopping area guide signs, including the highways along which a sign may be located. The commission may adopt rules prescribing conditions or guidelines the director should or must consider when determining whether to grant a variance.

(b) The director may grant a variance if the director determines that:

(1) the variance would promote traffic safety;

(2) the variance would improve traffic flow;

(3) an overpass, highway sign, or other highway structure unduly obstructs the visibility of an existing commercial sign; or

(4) the variance would satisfy other conditions or guidelines prescribed by commission rules authorizing the granting of variances.

(c) The director may not grant a variance to the requirements of this subchapter regarding supports, content, or composition of signs.

SECTION 2.05. Section 394.003, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) This chapter does not apply to a directional sign for a small business, as defined by Section 2006.001, Government Code, if the sign:

(1) is on private property; and

(2) has a surface area not larger than 50 square feet.

SECTION 2.06. Subsection (b), Section 394.021, Transportation Code, is amended to read as follows:

(b) Except as otherwise authorized by this chapter, the commission may not issue a permit for an off-premise sign unless the sign is to be located:

(1) within 800 feet of a [one or more] recognized commercial or industrial business activity or the office of a governmental entity [activities]; and

(2) on the same side of the road as the business activity or the office of the governmental entity [activities].

ARTICLE 3. TEXAS MOTOR VEHICLE COMMISSION CODE

SECTION 3.01. Section 2.02A, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.02A. APPOINTMENTS. Appointments to the Commission shall be made without [with due] regard to [for] the race, color, disability, sex, religion, or [ethnicity, gender, and] national origin of the appointees.

SECTION 3.02. Subchapter B, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Section 2.03A to read as follows:

Sec. 2.03A. TRAINING ON DEPARTMENT AND CERTAIN LAWS RELATING TO DEPARTMENT. (a) To be eligible to take office as a member of the Commission, a person appointed to the Commission must complete at least one course of a training program that complies with this section.

(b) The training program must provide information to the person regarding:

(1) this Act;

(2) the programs operated by the department;

- (3) the role and functions of the department;
- (4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the department;
- (6) the results of the most recent formal audit of the department;
- (7) the requirements of the:
 - (A) open meetings law, Chapter 551, Government Code;
 - (B) open records law, Chapter 552, Government Code; and
 - (C) administrative procedure law, Chapter 2001, Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by the Commission or the Texas Ethics Commission.

(c) A person appointed to the Commission is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the Commission.

SECTION 3.03. Subsection (b), Section 2.08, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The Commission is subject to Chapters 551 and 2001, Government Code [the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes)].

SECTION 3.04. Subsection (c), Section 2.08A, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(c) If the Executive Director has knowledge that a potential ground for removal exists, the Executive Director shall notify the Chairman of the Commission of the ground. The Chairman shall then notify the Governor and the Attorney General that a potential ground for removal exists. If the potential ground for removal relates to the Chairman of the Commission, the Executive Director shall notify the Vice-chairman of the Commission, who shall notify the Governor and the Attorney General that a potential ground for removal exists.

SECTION 3.05. Subsection (e), Section 2.09, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The Executive Director shall appoint and employ such Commission staff as are necessary to carry out the duties and functions of the Executive Director and the Commission under this Act. The Commission shall develop and implement policies that clearly separate the policy-making [define the respective] responsibilities of the Commission and the management responsibilities of the Executive Director and staff of the Commission.

SECTION 3.06. Subsection (b), Section 2.10, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The Commission shall file annually with the Governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Commission during the preceding fiscal year. The annual report must comply with each reporting requirement applicable to financial reporting [be in the form and reported in the time] provided by the General Appropriations Act.

SECTION 3.07. Section 2.12, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.12. COMPLAINTS. (a) The Commission shall:

(1) keep an information file about each complaint filed with the Commission that the Commission has authority to resolve; and

(2) provide the person who filed the complaint, and each person or entity that is the subject of the complaint, information about the Commission's policies and procedures relating to complaint investigation and resolution.

(b) If a written complaint is filed with the Commission that the Commission has authority to resolve, the Commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing Commission investigation.

(c) With regard to each complaint filed with the Commission, the Commission shall keep the following information:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) if the Commission takes no action on the complaint, an explanation of the reasons that no action was taken.

SECTION 3.08. Subsections (a), (b), and (d), Section 2.13, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The Executive Director or his designee shall develop an intraagency career ladder program that addresses opportunities for mobility and advancement of employees in the Commission. The program shall require intraagency postings of all [~~nonentry-level~~] positions concurrently with any public posting.

(b) The Executive Director or his designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for Commission employees must be based on the system established under this subsection.

(d) The Executive Director or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability [~~handicap~~], sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the Commission work force that meets federal and state laws, rules, and regulations, and instructions directly adopted under those laws, rules, or regulations ~~[guidelines]~~;

(3) procedures by which a determination can be made of significant underuse in the Commission work force of all persons for whom federal or state laws, rules, and regulations, and instructions directly adopted under those laws, rules, or regulations, ~~[guidelines]~~ encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

A policy statement prepared under this subsection must cover an annual period, be updated at least annually, be reviewed by the Texas Commission on Human Rights for compliance with Subdivision (1) of this subsection, and be filed with the Governor's office.

The Governor's office shall deliver a biennial report to the legislature based on the information received under this subsection. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 3.09. Section 4.01B, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01B. ~~[NOTICE OF]~~ LICENSE EXPIRATION. (a) The Commission by rule may implement a system under which licenses expire on various dates during the year.

(b) The Commission shall notify each person licensed under this Act of the date of license expiration and the amount of the fee required for license renewal. The notice shall be mailed at least thirty days before the date of license expiration.

(c) For a year in which a license expiration date is changed, the fee for the license shall be prorated so that the holder of the license pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the entire license renewal fee is payable.

ARTICLE 4. MOTOR CARRIERS

SECTION 4.01. Subsection (i), Section 3, Article 6675c, Revised Statutes, is amended to read as follows:

(i) A registration issued under this article is valid for one year. The department may adopt a system under which registrations expire at different times during the year. At least 30 days before the date on which a motor carrier's registration expires, the department shall notify the carrier of the impending expiration. The notice must be in writing and sent to the motor carrier's last known address according to the records of the department. A motor carrier may renew a registration under this article by:

(1) supplementing the application with any new information required under Subsection (g) of this section;

(2) paying a \$10 fee for each vehicle requiring registration the carrier operates; and

(3) showing the department evidence of continuing insurance or financial responsibility in an amount at least equal to the amount set by the department under Section 4(a) of this article.

SECTION 4.02. Section 7, Article 6675c, Revised Statutes, is amended to read as follows:

Sec. 7. SUSPENSION AND REVOCATION OF REGISTRATION.

(a) The department may suspend or revoke a registration issued under this article or place on probation a motor carrier whose registration is suspended if:

(1) a motor carrier fails to maintain insurance as required by Section 4(a) or (b) of this article;

(2) a motor carrier fails to keep proof of insurance in the cab of each vehicle as required by Section 4(e) of this article;

(3) a motor carrier fails to register a vehicle requiring registration; or

(4) a motor carrier knowingly provides false information on any form filed with the department under this section.

(b) The Department of Public Safety may request that the department suspend or revoke a registration issued under this article or place on probation a motor carrier whose registration is suspended if a motor carrier:

(1) has an unsatisfactory safety rating under 49 C.F.R. Part 385; or

(2) has multiple violations of a provision of Article 6675d, Revised Statutes, a rule adopted under that article, or the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(c) Except as provided by Subsection (d) of this section, a suspension or revocation or the imposition of probation made under Subsection (a) or (b) of this section is a contested case under Chapter 2001, Government Code.

(d) The department may suspend or revoke a registration issued under this article or place on probation a motor carrier whose registration is suspended without a hearing under Chapter 2001, Government Code, if:

(1) the department provides notice to the motor carrier of:

(A) the proposed suspension or revocation; and

(B) the right of the carrier to request a hearing under Chapter 2001, Government Code; and

(2) the motor carrier fails to provide the department with a written request for a hearing within 10 days after the date the carrier receives the notice described in Subdivision (1) of this subsection.

(e) If the suspension of a motor carrier's registration is probated, the department may require the carrier to report regularly to the department on any matter that is the basis of the probation.

SECTION 4.03. Section 8, Article 6675c, Revised Statutes, is amended by adding Subsection (g) to read as follows:

(g) The department may not by rule restrict competitive bidding or advertising by a motor carrier except to prohibit false, misleading, or deceptive practices. A rule to prohibit false, misleading, or deceptive practices may not:

- (1) restrict the use of:
 - (A) any medium for an advertisement;
 - (B) the motor carrier's advertisement under a trade name; or
 - (C) the motor carrier's personal appearance or voice in an advertisement, if the motor carrier is an individual; or
- (2) relate to the size or duration of an advertisement by the motor carrier.

ARTICLE 5. SALVAGE VEHICLE DEALERS

SECTION 5.01. Section 1.02, Article 6687-1a, Revised Statutes, is amended by adding Subsection (c) to read as follows:

(c) The commission may not adopt a rule under this article that restricts competitive bidding or advertising by a person who holds a license issued under this article other than a rule to prohibit false, misleading, or deceptive practices. A rule to prohibit false, misleading, or deceptive practices may not:

- (1) restrict the use of:
 - (A) any medium for an advertisement;
 - (B) the license holder's advertisement under a trade name; or
 - (C) the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or
- (2) relate to the size or duration of an advertisement by the license holder.

SECTION 5.02. Section 2.07, Article 6687-1a, Revised Statutes, is amended to read as follows:

Sec. 2.07. LICENSE RENEWAL. (a) A license issued under this article expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the department before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in the activities that require a license until the license has been renewed under the provisions of this section.

(c) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department one and one-half times the required renewal fee.

(d) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the department two times the required renewal fee.

(e) If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. If the person was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person may renew an expired license. The person must pay to the department a fee that is equal to two times the required renewal fee for the license.

(f) At least 30 days before the date on which a person's license expires, the department shall notify the person of the impending expiration. The

notice must be in writing and sent to the person's last known address according to the records of the department. [If a license holder fails to renew the license before its expiration date, the license holder may renew the license on payment of the renewal fee and a late fee set by the commission. If the license is not renewed before the first anniversary of the date on which the license expired, the license holder must apply for a new license in the same manner as an applicant for an initial license.]

SECTION 5.03. Subsection (b), Section 4.01, Article 6687-1a, Revised Statutes, is amended to read as follows:

(b) The commission shall adopt rules establishing the grounds for the denial, suspension, revocation, or reinstatement of a license and establishing procedures for disciplinary actions. A rule adopted under this subsection may not conflict with a rule adopted by the State Office of Administrative Hearings.

ARTICLE 6. VEHICLE STORAGE FACILITY ACT

SECTION 6.01. Section 4, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by adding Subsection (d) to read as follows:

(d) The commission may not adopt a rule under this Act that restricts competitive bidding or advertising by a person who holds a license issued under this Act other than a rule to prohibit false, misleading, or deceptive practices. A rule to prohibit false, misleading, or deceptive practices may not:

(1) restrict the use of:

(A) any medium for an advertisement;

(B) the license holder's advertisement under a trade name; or

(C) the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or

(2) relate to the size or duration of an advertisement by the license holder.

SECTION 6.02. Subsection (a), Section 9, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(a) A license issued under this article is valid for the period set by the commission. At least 30 days before the date on which a person's license expires, the commission shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the commission.

SECTION 6.03. Section 10, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by adding Subsections (e) and (f) to read as follows:

(e) If the commission places a person on probation under this section, the commission may require the person to report regularly to the commission on any matter that is the basis of the probation.

(f) If the commission proposes to take an action under Subsection (a) or (b) of this section, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Rules of practice adopted by the commission under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may

not conflict with rules adopted by the State Office of Administrative Hearings.

ARTICLE 7. TURNPIKES

SECTION 7.01. Chapter 222, Transportation Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TOLL FACILITIES.

Sec. 222.101. EXPENDITURE OF MONEY. The department may spend money from any source for the construction, maintenance, and operation of toll facilities.

Sec. 222.102. TEMPORARY TOLL PROJECTS. The department may recover the cost of a preventative maintenance or rehabilitation project on a nontoll segment of the state highway system by temporarily imposing a toll charge if the commission determines the segment is subject to heavy passenger and commercial traffic.

Sec. 222.103. COST PARTICIPATION. (a) The department may participate in the cost of the construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission, including requirements for repayment. The department may not participate in the cost of a toll facility of a private entity unless the commission determines the facility fills a demonstrated public need.

(b) An entity receiving cost participation from the department under this section is a successor agency to the Texas Turnpike Authority for the purposes of Section 52-b, Article III, Texas Constitution.

SECTION 7.02. Section 362.055, Transportation Code, is amended to read as follows:

Sec. 362.055. EXCEPTION. This subchapter does not apply to:

- (1) a county that has a population of more than 1.5 million; ~~or~~
- (2) a local government corporation created under Chapter 431 by a county that has a population of more than 1.5 million; ~~or~~
- (3) a regional tollway authority created under Chapter 366.

SECTION 7.03. Section 361.001, Transportation Code, is amended to read as follows:

Sec. 361.001. DEFINITIONS. In this chapter:

(1) "Authority" means the Texas Turnpike Authority ~~division of the Texas Department of Transportation [and includes the entity that succeeds to the principal functions of the authority or to whom by law the powers of the authority are given].~~

(2) "Board" means the board of directors of the authority.

(3) ~~["Highway" means a road, highway, farm-to-market road, or street under the supervision of the state or a political subdivision of the state.~~

~~[(4)]~~ "Owner" includes a person having title to or an interest in any property, rights, easements, and interests authorized to be acquired under this chapter.

(4) ~~[(5)]~~ "Turnpike project" means a toll [an express] highway constructed, maintained, or operated under this chapter as part of the state highway system and any improvement, extension, or expansion to the highway and includes:

- (A) a facility to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, or service station;

(C) an administration, storage, or other building the authority considers necessary to operate the project; and

(D) property rights, easements, and interests the authority acquires to construct or operate the project.

(5) "Regional tollway authority" means a regional tollway authority created under Chapter 366.

SECTION 7.04. Section 361.031, Transportation Code, is amended to read as follows:

Sec. 361.031. TEXAS TURNPIKE AUTHORITY. (a) The Texas Turnpike Authority is a division of the Texas Department of Transportation that has full authority to exercise all powers granted to it under this chapter. Powers granted to the department under this chapter, Chapter 362, and Subchapter E, Chapter 222, to study, design, construct, operate, expand, enlarge, or extend a turnpike project as a part of the state highway system shall be exercised by the department acting by and through the authority [state agency].

(b) The authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for:

- (1) right-of-way acquisition;
- (2) roadway finance, design, and construction;
- (3) environmental affairs; or
- (4) legal services.

(c) With the approval of the commission, the authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for roadway maintenance or traffic operations.

(d) To perform its functions under this chapter, the authority may use the facilities and personnel of the department in the same manner as other divisions of the department.

(e) If the comptroller assigns numbers to state agencies for accounting purposes, the comptroller shall assign a separate agency number to the authority [The authority shall locate offices in Austin, Texas, on or before September 1, 1997].

(f) [(c)] The exercise by the authority of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

- (1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and public safety; and
- (2) an essential governmental function of the state.

SECTION 7.05. Subsection (a), Section 361.032, Transportation Code, is amended to read as follows:

(a) The board is composed of seven [12] directors. The governor, with the advice and consent of the senate, shall appoint six [nine] directors who represent the public. The chair of the [Each] commission or a member of the commission designated by the chair serves as an ex officio board member.

SECTION 7.06. Subsection (a), Section 361.033, Transportation Code, is amended to read as follows:

(a) A person is not eligible for appointment to the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of toll road construction, maintenance, or operation;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission, department, or authority or receiving funds from the commission, department, or authority;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the commission, department, or authority, other than compensation for acquisition of turnpike right-of-way; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, department, or authority, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses or compensation for acquisition of turnpike right-of-way.

SECTION 7.07. Subchapter B, Chapter 361, Transportation Code, is amended by adding Section 361.0335 to read as follows:

Sec. 361.0335. TRAINING FOR BOARD MEMBERS. (a) To be eligible to take office as a member of the board, a person appointed to the board must complete at least one course of a training program that complies with this section.

(b) A training program must provide information to the person regarding:

(1) this chapter;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001,

Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the board.

SECTION 7.08. Section 361.042, Transportation Code, is amended to read as follows:

Sec. 361.042. GENERAL POWERS AND DUTIES. (a) The board [authority] shall:

(1) on its own initiative or at the request of the commission, consider, study, plan, and develop turnpike projects under this chapter;

(2) adopt rules [bylaws] for the regulation of its affairs and the conduct of its business;

(3) with the concurrence of the commission, employ an administrative head, who serves at the pleasure of the board; and

(4) undertake such other duties as are delegated to it by the commission.

(b) The authority may:

(1) ~~[(2)] adopt an official seal;~~

~~[(3)]~~ construct, maintain, repair, and operate turnpike projects in this state;

(2) ~~[(4)]~~ acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(3) with the approval of the governor and the commission, [(5)] enter into contracts or operating agreements with similar authorities or agencies of another state, including a state of the United Mexican States;

(4) ~~[(6)]~~ enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;

(5) ~~[(7)]~~ employ consulting engineers, ~~[attorneys,]~~ accountants, construction and financial experts, superintendents, managers, and other employees and agents the authority considers necessary and set their compensation;

(6) employ attorneys to advance or defend legal actions pertaining to the division's activities, notwithstanding any other law to the contrary, including Section 402.0212, Government Code;

(7) ~~[(8)]~~ receive grants for the construction of a turnpike project and receive contributions of money, property, labor, or other things of value from any source to be used for the purposes for which the grants or contributions are made;

(8) ~~[(9)]~~ adopt and enforce rules, if the commission concurs, not inconsistent with this chapter for the use of any turnpike project; and

(9) ~~[(10)]~~ do all things necessary or appropriate to carry out the powers expressly granted by this chapter.

SECTION 7.09. Section 361.055, Transportation Code, is amended to read as follows:

Sec. 361.055. SUCCESSION AGENCY TO AUTHORITY. The following are considered successor agencies to the Texas Turnpike Authority ~~[authority]~~ for purposes of Section 52-b, Article III, Texas Constitution:

(1) a county, municipality, or local government corporation that leases, buys, operates, or otherwise receives a turnpike project under Subchapter H;

(2) a county with a population of more than 1.5 million that constructs a toll road, toll bridge, or turnpike project;

(3) a local government corporation serving a county with a population of more than 1.5 million that constructs a toll road, toll bridge, or turnpike project; ~~[and]~~

(4) an adjacent county in a joint turnpike authority with a county with a population of more than 1.5 million that constructs a toll road, toll bridge, or turnpike project;

(5) the department;

(6) a public entity authorized to receive funds from the department for the construction, maintenance, or operation of toll projects; and

(7) a private entity authorized to receive funds from the department for the construction, maintenance, or operation of toll projects if the department determines that the use of the private entity fills a demonstrated public need.

SECTION 7.10. Section 361.132, Transportation Code, is amended to read as follows:

Sec. 361.132. ACQUISITION OF PROPERTY. (a) The board [~~authority~~] may acquire, in the name of the state, [~~authority~~] public or private real property it determines necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a turnpike project or for otherwise carrying out this chapter.

(b) The real property the authority may acquire under this chapter includes:

(1) public parks, playgrounds, or reservations;

(2) parts of or rights in public parks, playgrounds, or reservations;

(3) rights-of-way;

(4) property rights, including:

(A) a right of ingress or egress; and

(B) a reservation right in real property that restricts or prohibits for not more than seven years the:

(i) addition of a new improvement on the real property;

(ii) addition to or modification of an existing improvement on the real property; or

(iii) subdivision of the real property;

(5) franchises;

(6) easements; and

(7) other interests in real property.

(c) The board [~~authority~~] may acquire the real property by any method, including purchase and condemnation. The board [~~authority~~] may purchase public or private real property on the terms and at the price the board [~~authority~~] and the owner consider reasonable.

(d) Property necessary or convenient for the construction or operation of turnpike project under Subsection (a) includes an interest in real property, property right, or materials that the authority determines are necessary or convenient to:

(1) protect a turnpike project;

(2) drain a turnpike project;

(3) divert a stream, river, or other watercourse from the right-of-way of a turnpike project;

(4) store materials or equipment used in the construction or maintenance of a turnpike project;

(5) construct or operate a warehouse or other facility used in connection with the construction, maintenance, or operation of a turnpike project;

(6) lay out, construct, or maintain a roadside park;

(7) lay out, construct, or maintain a parking lot that will contribute to the maximum use of a turnpike project with the least possible congestion;

(8) mitigate an adverse environmental effect that directly results from the construction or maintenance of a turnpike project; or

(9) accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a turnpike project.

(e) The authority shall comply with all relocation assistance procedures applicable to the department in connection with any displacement of owners or tenants as a consequence of the authority's acquisition of real property under this chapter.

(f) The authority may acquire timber, earth, stone, gravel, or other materials as necessary to carry out a purpose under this chapter.

SECTION 7.11. Section 361.135, Transportation Code, is amended to read as follows:

Sec. 361.135. CONDEMNATION OF REAL PROPERTY. (a) The board, with the concurrence of the commission, ~~[authority]~~ may acquire public or private real property in the name of the state ~~[authority]~~ by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if:

(1) the authority and the owner cannot agree on a reasonable price for the property; or

(2) the owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) The board, with the concurrence of the commission, ~~[To the extent provided by Subsection (c), the authority]~~ may condemn real property that the authority determines is:

(1) necessary or appropriate to construct or to efficiently operate a turnpike project;

(2) necessary to restore public or private property damaged or destroyed; ~~[or]~~

(3) necessary for access, approach, and interchange roads; or

(4) necessary otherwise to carry out this chapter.

~~(c) [The authority may condemn real property necessary for access, approach, and interchange roads but may not condemn property:~~

~~[(1) that is unnecessary for road and right-of-way purposes; or~~

~~[(2) that is for a supplemental facility for another purpose.~~

~~[(d)]~~ The authority may construct a supplemental facility only on real property the authority purchases.

~~(d) [(c)]~~ The court having jurisdiction of a condemnation proceeding may:

(1) make orders as are just to the authority and the owners of the real property; and

(2) require an undertaking or other security to secure the owners against any loss or damage by reason of the board's ~~[authority's]~~ failure to accept and pay for the real property.

~~(e) [(f)]~~ An undertaking or security under Subsection ~~(d)(2)~~ ~~[(e)(2)]~~ or an act or obligation of the authority or the board does not impose any liability on the state, ~~[or]~~ the authority, or the board except liability that may be paid from the money authorized by this chapter.

SECTION 7.12. Section 361.136, Transportation Code, is amended to read as follows:

Sec. 361.136. SEVERANCE OF REAL PROPERTY. (a) If a turnpike project severs an owner's real property, the authority shall pay:

- (1) the value of the property acquired; and
- (2) the damages to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

~~(b) [The authority shall provide and maintain without charge a passageway over or under the turnpike project for the owner of the severed real property and the owner's employees and representatives. The authority is not required to furnish a passageway if the owner waives the requirement or the original tract involved is less than 80 acres.]~~

~~[(c)]~~ The authority may negotiate for and purchase the severed real property or either part of the severed real property if the authority and the owner agree on terms for the purchase. ~~[The authority shall sell and dispose of severed real property within two years after the date of acquisition.]~~

SECTION 7.13. Subsection (b), Section 361.137, Transportation Code, is amended to read as follows:

(b) The authority may not file the declaration of taking;

~~(1) before the 91st day after the date the condemnation petition has been filed; or~~

~~(2) [concurrently with or subsequent to the petition but may not file the declaration] after the special commissioners have made an award in the condemnation proceeding.~~

SECTION 7.14. Subchapter D, Chapter 361, Transportation Code, is amended by adding Section 361.142 to read as follows:

Sec. 361.142. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the authority are not binding against the authority and do not impair the authority's ability to use the property for a purpose authorized by this chapter. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to enjoin the authority from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek damages to the person's property under Section 17, Article I, Texas Constitution.

SECTION 7.15. Section 361.180, Transportation Code, is amended to read as follows:

Sec. 361.180. TOLLS ON CONVERTED HIGHWAYS [PROHIBITION ON TOLLS ON EXISTING FREE HIGHWAYS]. If converted to a toll facility under Section 222.102 or 362.0041, the commission [The authority]

may impose a toll for transit over an existing free public highway ~~[only if such highway is transferred to the authority by the commission under Section 362.0041].~~

SECTION 7.16. Subsection (b), Section 361.184, Transportation Code, is amended to read as follows:

(b) The ~~board~~ [authority] may transfer, ~~or direct the authority to transfer,~~ into the project revolving fund money from any permissible source, including:

(1) money from a surplus fund established for a turnpike project if the remainder of the surplus fund is not less than any minimum amount required by the trust agreement to be retained for that project;

(2) money received under Subchapter I or from a transfer of a turnpike project under Subchapter H;

(3) advances from the state highway fund if the advances are repaid as required by [department authorized under] Section 52-b, Article III, Texas Constitution; and

(4) contributions or assistance from the United States, another state, a political subdivision of this state, the United Mexican States, or a political subdivision of the United Mexican States.

SECTION 7.17. Section 361.189, Transportation Code, is amended to read as follows:

Sec. 361.189. USE OF SURPLUS REVENUE. ~~[(a)]~~ The ~~commission~~ [board] by resolution may authorize the use of surplus revenue of a turnpike project to pay the costs of another turnpike project, other than a project financed under Subchapter I, ~~or a toll-free project.~~ The ~~commission~~ [board] may in the resolution prescribe terms for the use of the revenue, including the pledge of the revenue, but may not take an action under this section that[-

~~[(1) violates Subsection (b); or~~

~~[(2)]~~ violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the surplus revenue.

~~[(b) Except as provided by Subsection (c), the surplus revenue of a turnpike project that was under construction or operated by the authority on January 1, 1993, may be used only for:~~

~~[(1) the costs associated with the construction, expansion, or maintenance of the project producing the revenue; and~~

~~[(2) transfers to the Texas Turnpike Authority feasibility study fund.~~

~~[(c) The board may use revenue from a turnpike project described by Subsection (b) for a purpose authorized by this chapter other than a purpose described by that subsection if:~~

~~[(1) the authority obtains the permission of the commissioners court of each county in which the project is located; or~~

~~[(2) an agreement between the authority and a county or local government corporation created by the county for the lease, sale, or other conveyance of the project permits the revenue to be used for another purpose.]~~

SECTION 7.18. Section 361.232, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to the conversion of any highway that is a part of the state highway system to a turnpike project.

SECTION 7.19. Section 361.237, Transportation Code, is amended to read as follows:

Sec. 361.237. OPERATION OF TURNPIKE PROJECT. A turnpike project is a public road subject to all laws applicable to the regulation and control of traffic. ~~[(a) The authority shall police and operate a turnpike project through a force of police, toll-takers, and other employees of the authority.~~

~~[(b) The authority may arrange with the Department of Public Safety for the services of officers of that agency.]~~

SECTION 7.20. Section 361.238, Transportation Code, is amended to read as follows:

Sec. 361.238. PAYMENT OF BOND INDEBTEDNESS; CESSATION OR CONTINUATION OF TOLLS; ~~TRANSFER OF PROJECT TO COMMISSION~~. (a) Except as provided by Subsection (b), a [A] turnpike project [that is in good condition and repair to the satisfaction of the commission] becomes a toll-free [part of the state] highway [system] when:

(1) the bonds issued under this chapter for the project and the interest on the bonds are paid; or

(2) firm banking and financial arrangements have been made for the discharge and final payment or redemption of the bonds in accordance with Section 7A, Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes) [a sufficient amount to pay the bonds and the interest on the bonds to maturity or to redeem the bonds has been set aside in trust for the benefit of the bondholders].

(b) If the conditions of Subsections (a)(1) and (2) are met, the commission may continue to charge a toll sufficient to pay the costs of maintaining the facility. ~~[The authority shall continue to operate as a toll facility a turnpike project that the commission determines is not in a state of repair so as to justify its acceptance as part of the state highway system. The authority shall continue the tolls then in effect or revise the tolls to provide money sufficient to assure payment of the expenses of maintenance and operation and the making of repairs and replacements as necessary to meet the minimum requirements of the commission within the shortest practicable time.]~~

~~[(c) The commission shall maintain a turnpike project it accepts free of tolls. The authority shall deliver to the commission at the time of acceptance any money remaining to the credit of the project after retirement of the bonds issued for the project. The commission shall deposit the money in a fund to be used to maintain the project facilities. The commission shall administer the fund in accordance with commission rules.]~~

~~[(d) Not later than the first anniversary of the date the commission accepts a turnpike project, the department shall advertise for public sale each installation on the project other than the road bed and highway sections and shall solicit sealed bids for those installations. The department may reject any or all bids but shall dispose of the properties not later than the second anniversary of the date the commission accepts title to the project.]~~

SECTION 7.21. The heading of Subchapter H, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER H. TRANSFER OF TURNPIKE PROJECT TO
COUNTY, MUNICIPALITY, REGIONAL TOLLWAY
AUTHORITY, OR LOCAL GOVERNMENT CORPORATION

SECTION 7.22. Sections 361.281, 361.282, and 361.285, Transportation Code, are amended to read as follows:

Sec. 361.281. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:

- (1) a county with a population of more than 1.5 million;
- (2) a local government corporation serving a county with a population of more than 1.5 million; ~~or~~
- (3) an adjacent county in a joint turnpike authority with a county with a population of more than 1.5 million;
- (4) a municipality with a population of more than 120,000 that is adjacent to the United Mexican States; or
- (5) a regional tollway authority created under Chapter 366.

Sec. 361.282. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. (a) The authority may lease, sell, or convey in another manner a turnpike project to a county, municipality, regional tollway authority, or a local government corporation created under Chapter 431.

(b) The authority, the commission, and the governor must approve the transfer of the turnpike project as being in the best interests of the state and the entity receiving the turnpike project ~~county~~.

Sec. 361.285. APPROVAL OF AGREEMENT BY ATTORNEY GENERAL. (a) An agreement for the lease, sale, or conveyance of a turnpike project under this subchapter shall be submitted to the attorney general for approval as part of the records of proceedings relating to the issuance of bonds of the county, municipality, regional tollway authority, or local government corporation.

(b) If the attorney general determines that the agreement is in accordance with law, the attorney general shall approve the agreement and deliver to the commission a copy of the legal opinion of the attorney general stating that approval.

SECTION 7.23. Subsection (a), Section 361.331, Transportation Code, is amended to read as follows:

(a) The authority may designate two or more turnpike projects that are wholly or partly located in a metropolitan planning organization ~~planning region of a council of governments~~ as a pooled turnpike project after:

- (1) conducting a public hearing; and
- (2) obtaining the approval of the commission; ~~and~~
- ~~[(3) obtaining a resolution adopted by the commissioners court of the county that:~~

~~[(A) approves the action; and~~

~~[(B) specifies the date the pooled project becomes toll free].~~

SECTION 7.24. Section 362.0041, Transportation Code, is amended to read as follows:

Sec. 362.0041. CONVERSION ~~[ACQUISITION]~~ OF PROJECTS. (a) If the commission finds that the conversion of a segment of the free state highway system to a toll facility is the most feasible and economic means to accomplish necessary expansion improvements, or extensions to the state highway system, that segment may ~~[, on approval of the governor,]~~ be converted ~~[transferred]~~ by order of the commission to ~~[the authority. The authority may receive such segment of highway, thereafter to be owned, operated, and maintained as]~~ a turnpike project under Chapter 361.

~~(b) [The authority shall reimburse the commission for the cost of the transferred highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the traveling public that exceed that cost. The cost shall include the total dollar amount expended by the department for the original construction of the highway, including all costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary right-of-way, and actual construction of the highway and all necessary appurtenant facilities.]~~

~~[(c) The commission shall, coincident with the transfer, remove the segment of highway from the designated state highway system and shall subsequently have no liability, responsibility, or duty for the maintenance or operation of the highway.]~~

~~[(d)]~~ Prior to converting ~~[transferring]~~ a segment of the state highway system under this section, the commission shall conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. Notice of the hearing shall be published in the Texas Register, one or more newspapers of general circulation, and a newspaper, if any, published in the county or counties in which the involved highway is located.

~~(c) [(e)]~~ The commission shall adopt rules implementing this section, such rules to include criteria and guidelines for the approval of a conversion ~~[transfer]~~ of a highway.

SECTION 7.25. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 366 to read as follows:

CHAPTER 366. REGIONAL TOLLWAY AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 366.001. SHORT TITLE. This chapter may be cited as the Regional Tollway Authority Act.

Sec. 366.002. PURPOSES: LIBERAL CONSTRUCTION. (a) The purposes of this chapter are:

(1) the expansion and improvement of transportation facilities and systems in this state;

(2) the creation of regional tollway authorities to secure and acquire rights-of-way for urgently needed transportation systems and to plan, design, construct, operate, expand, extend, and modify those systems; and

(3) the reduction of burdens and demands on the limited money available to the commission and an increase in the effectiveness and efficiency of the commission.

(b) This chapter shall be liberally construed to effect its purposes.

Sec. 366.003. DEFINITIONS. In this chapter:

(1) "Authority" means a regional tollway authority organized under this chapter.

(2) "Board" means the board of directors of an authority organized under this chapter.

(3) "Bond" means all bonds, certificates, notes, and other obligations of an authority authorized by this chapter, any other statute, or the Texas Constitution.

(4) "Bond proceedings" means a bond resolution and any bond indenture authorized by the bond resolution, any credit agreement entered into in connection with the bonds or the payments to be made under the agreement, and any other agreement between an authority and another person providing security for the payment of bonds.

(5) "Bond resolution" means an order or resolution of an authority's board authorizing the issuance of bonds.

(6) "Bondholder" means the owner of bonds and includes a trustee acting on behalf of an owner of bonds under the terms of a bond indenture.

(7) "Highway" means a road, highway, farm-to-market road, or street under the supervision of the state or a political subdivision of the state.

(8) "Local governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a district organized or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, or a nonprofit corporation, including a transportation corporation created under Chapter 431.

(9) "Revenue" means the tolls, rents, and other money received by an authority from the ownership or operation of a turnpike project.

(10) "System" means a turnpike project or any combination of turnpike projects designated as a system by the board under Section 366.034.

(11) "Turnpike project" means a highway of any number of lanes, with or without grade separations, owned or operated by an authority under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, service road, ramp, entrance plaza, approach, or tollhouse;

(C) an administration, storage, or other building the authority considers necessary to operate the turnpike project;

(D) a service station, hotel, motel, restaurant, parking area or structure, rest stop, park, and other improvement or amenity the authority considers necessary, useful, or beneficial for the operation of a turnpike project; and

(E) property rights, easements, and interests the authority acquires to construct or operate the turnpike project.

Sec. 366.004. CONSTRUCTION COSTS DEFINED. (a) The cost of acquisition, construction, improvement, extension, or expansion of a turnpike project or system under this chapter includes the cost of:

(1) the actual acquisition, construction, improvement, extension, or expansion of the turnpike project or system;

(2) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property;

(3) machinery and equipment;

(4) interest payable before, during, and after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;

(5) traffic estimates, revenue estimates, engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary or incidental to determining the feasibility of the construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;

(7) compliance with laws, regulations, and administrative rulings;

(8) financing; and

(9) expenses related to the initial operation of the turnpike project or system.

(b) Costs attributable to a turnpike project or system and incurred before the issuance of bonds to finance the turnpike project or system may be reimbursed from the proceeds of sale of the bonds.

[Sections 366.005-366.030 reserved for expansion]

SUBCHAPTER B. CREATION AND POWERS

OF REGIONAL TOLLWAY AUTHORITIES

Sec. 366.031. CREATION AND EXPANSION OF A REGIONAL TOLLWAY AUTHORITY. (a) Two or more counties, acting through their respective commissioners courts, may by order passed by each commissioners court create a regional tollway authority under this chapter if:

(1) one of the counties has a population of not less than 300,000;

(2) the counties form a contiguous territory; and

(3) unless one of the counties has a population of 1.5 million or more, the commission approves the creation.

(b) The commission shall adopt rules to implement the provisions of this section by March 1, 1998.

(c) A commissioners court may by resolution petition an established authority for inclusion in the authority if the county is contiguous to a county that initially created the authority.

(d) On approval of the board of an authority receiving a petition under Subsection (c), the county becomes part of the authority.

Sec. 366.032. NATURE OF REGIONAL TOLLWAY AUTHORITY.

(a) An authority created under this chapter is a body politic and corporate and a political subdivision of this state.

(b) An authority is a governmental unit as that term is defined in Chapter 101, Civil Practice and Remedies Code.

(c) The exercise by an authority of the powers conferred by this chapter in the acquisition, design, financing, construction, operation, and maintenance of a turnpike project or system is:

(1) in all respects for the benefit of the people of the counties in which an authority operates and of the people of this state, for the increase of

their commerce and prosperity, and for the improvement of their health, living conditions, and public safety; and

(2) an essential governmental function of the state.

(d) The operations of an authority are governmental, not proprietary, functions.

(e) An authority created before January 1, 2000, is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The authority shall be reviewed during the period:

(1) in which state agencies abolished in 2003 are reviewed; and

(2) in which the department is reviewed.

(f) An authority created on or after January 1, 2000, is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The authority shall be reviewed during the period in which the department is reviewed.

Sec. 366.033. GENERAL POWERS. (a) An authority, acting through its board, without state approval, supervision, or regulation, may:

(1) adopt rules for the regulation of its affairs and the conduct of its business;

(2) adopt an official seal;

(3) study, evaluate, design, acquire, construct, maintain, repair, and operate turnpike projects, individually or as one or more systems;

(4) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(5) enter into contracts or operating agreements with similar authorities or agencies of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States;

(6) enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;

(7) cooperate and work directly with property owners and governmental agencies and officials to support an activity required to promote or develop a turnpike project or system;

(8) employ and set the compensation of administrators, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, full-time and part-time employees, agents, consultants, and such other persons as the authority considers necessary or useful;

(9) receive loans, gifts, grants, and other contributions for the construction of a turnpike project or system and receive contributions of money, property, labor, or other things of value from any source, including the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, the commission, the department, any subdivision of the state, or any other local governmental or private entity, to be used for the purposes for which the grants or contributions are made, and enter into any agreement necessary for the grants or contributions;

(10) install, construct, maintain, repair, renew, relocate, and remove public utility facilities in, on, along, over, or under a turnpike project;

(11) organize a corporation under Chapter 431 for the promotion and development of turnpike projects and systems;

(12) adopt and enforce rules not inconsistent with this chapter for the use of any turnpike project or system, including traffic and other public safety rules;

(13) enter into leases, operating agreements, service agreements, licenses, franchises, and similar agreements with public or private parties governing the parties' use of all or any portion of a turnpike project and the rights and obligations of the authority with respect to a turnpike project; and

(14) do all things necessary or appropriate to carry out the powers expressly granted by this chapter.

(b) Rules adopted by the authority must comply with the procedures in Subchapter B, Chapter 2001, Government Code, and are subject to Section 2001.038, Government Code, except that the action may be brought only in a district court of a county located in the authority.

(c) Property comprising a part of a turnpike project or a system is not subject to condemnation or the power of eminent domain by any person, including a governmental entity.

(d) An authority may, if requested by the commission, perform any function not specified by this chapter to promote or develop turnpike projects and systems in this state.

(e) An authority may sue and be sued and plead and be impleaded in its own name.

(f) An authority may rent, lease, franchise, license, or otherwise make portions of its properties available for use by others in furtherance of its powers under this chapter by increasing the feasibility or the revenue of a turnpike project or system.

(g) An authority and any local governmental entity may enter into a contract under which the authority will operate a turnpike project or system on behalf of the local governmental entity. An authority may enter into a contract with the department under which the authority will operate a turnpike project or system on behalf of the department.

(h) The payments to be made to an authority under a contract described by Subsection (g) shall constitute operating expenses of the facility or system that is to be operated under the contract, and the contract may extend for a number of years as the parties agree.

(i) An authority shall adopt a written drug and alcohol policy restricting the use of controlled substances by employees of the authority, prohibiting the consumption of alcoholic beverages by employees while on duty, and prohibiting employees from working for the authority while under the influence of controlled substances or alcohol. An authority may adopt policies regarding the testing of employees suspected of being in violation of the authority's drug and alcohol policy. The policy shall provide that, unless required by court order or permitted by the person who is the subject of the testing, the authority shall keep the results of the test confidential.

(j) An authority shall adopt written procedures governing its procurement of goods and services that are consistent with general laws applicable to the authority.

Sec. 366.034. ESTABLISHMENT OF TURNPIKE SYSTEMS. (a) If an authority determines that the traffic needs of the counties in which it operates and the traffic needs of the surrounding region could be most efficiently and economically met by jointly operating two or more turnpike projects as one operational and financial enterprise, it may create a system comprised of those turnpike projects. An authority may create more than one system and may combine two or more systems into one system. An authority may finance, acquire, construct, and operate additional turnpike projects as additions to and expansions of a system if the authority determines that the turnpike project could most efficiently and economically be acquired and constructed if it were a part of the system and that the addition will benefit the system.

(b) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a turnpike project that is not a part of the system or with the revenue of another system.

Sec. 366.035. CONVERSION OF STATE HIGHWAY SYSTEM PROJECTS. (a) If the commission determines that the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to the state highway system is the conversion to a turnpike project of a segment of the free state highway system, any segment located in a county of an authority or a county in which an authority operates a turnpike project or in any county adjacent to those counties may, on approval of the governor and the affected authority, be transferred by order of the commission to that authority. An authority that receives the segment of highway may own, operate, and maintain the segment as a turnpike project or system or a part of a turnpike project or system under this chapter.

(b) An authority shall reimburse the commission for the cost of a transferred highway, unless the commission determines that the transfer will result in substantial net benefits to the state, the department, and the traveling public that exceed that cost. The cost includes the total amount expended by the department for the original construction of the highway, including all costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the highway and all necessary appurtenant facilities. Costs anticipated to be expended to expand, improve, or extend the highway shall be deducted from the costs to be reimbursed to the commission.

(c) The commission shall, at the time of a transfer, remove the segment of highway from the state highway system. After a transfer the commission has no liability, responsibility, or duty for the maintenance or operation of the highway.

(d) Before transferring a segment of the state highway system under this section, the commission shall conduct a public hearing to receive comments from interested persons concerning the proposed transfer. Notice of the hearing must be published in the Texas Register, one or more newspapers of general circulation in the counties in which the segment is located, and a newspaper, if any, published in the counties of the applicable authority.

(e) The commission shall adopt rules implementing this section. The rules shall include criteria and guidelines for the approval of a transfer of a highway.

(f) An authority shall adopt rules providing criteria and guidelines for approving the acceptance of a highway under this section.

[Sections 366.036-366.070 reserved for expansion]

SUBCHAPTER C. FEASIBILITY OF REGIONAL TURNPIKE PROJECTS

Sec. 366.071. EXPENDITURES FOR FEASIBILITY STUDIES. (a) An authority may pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of bonds for a proposed turnpike project or system by:

(1) using legally available revenue derived from an existing turnpike project or system;

(2) borrowing money and issuing bonds or entering into a loan agreement payable out of legally available revenue anticipated to be derived from the operation of an existing turnpike project or system; or

(3) pledging to the payment of the bonds or loan agreements legally available revenue anticipated to be derived from the operation of an existing turnpike project or system or revenue legally available to the authority from another source.

(b) Money spent under this section for a proposed turnpike project or system must be reimbursed to the turnpike project or system from which the money was spent from the proceeds of bonds issued for the acquisition and construction of the proposed turnpike project or system.

(c) The use of any money of a turnpike project or system to study the feasibility of another turnpike project or system or used to repay any money used for that purpose does not constitute an operating expense of the turnpike project or system producing the revenue and may only be paid from the surplus money of the turnpike project or system.

Sec. 366.072. FEASIBILITY STUDY FUND. (a) An authority may maintain a feasibility study fund. The fund is a revolving fund held in trust by a banking institution chosen by the authority and shall be kept separate from the money for any turnpike project or system.

(b) An authority may transfer an amount from a surplus fund established for a turnpike project or system to the authority's feasibility study fund if the remainder of the surplus fund is not less than any minimum amount required by the bond proceedings to be retained for that turnpike project or system.

(c) Money in the feasibility study fund may be used only to pay the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed turnpike project or system;

(2) the financing of the improvement, extension, or expansion of an existing turnpike project or system; and

(3) private participation, as authorized by law, in the financing of a proposed turnpike project or system, the refinancing of an existing turnpike project or system, or the improvement, extension, or expansion of a turnpike project or system.

(d) Money spent under Subsection (c) for a proposed turnpike project or system must be reimbursed from the proceeds of turnpike revenue bonds issued for, or other proceeds that may be used for, the acquisition, construction, improvement, extension, expansion, or operation of the turnpike project or system.

(e) For a purpose described by Subsection (c), an authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of its feasibility study fund, pledging money in the fund or to be placed in the fund.

Sec. 366.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OTHER LOCAL GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) One or more municipalities, counties, or local governmental entities, a combination of municipalities, counties, and local governmental entities, or a private group or combination of individuals in this state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed turnpike project or system by an authority;

(2) the improvement, extension, or expansion of an authority's existing turnpike project or system; or

(3) the use of private participation under applicable law in connection with the acquisition, construction, improvement, expansion, extension, maintenance, repair, or operation of a turnpike project or system by an authority.

(b) Money spent under Subsection (a) for an authority's proposed turnpike project or system is reimbursable without interest and with the consent of the authority to the person paying the expenses described in Subsection (a) out of the proceeds from turnpike revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, or operation of the turnpike project or system.

[Sections 366.074-366.110 reserved for expansion]

SUBCHAPTER D. TURNPIKE FINANCING

Sec. 366.111. TURNPIKE REVENUE BONDS. (a) An authority, by adoption of a bond resolution, may authorize the issuance of bonds to pay all or part of the cost of a turnpike project or system, to refund any bonds previously issued for the turnpike project or system, or to pay for all or part of the cost of a turnpike project or system that will become a part of another system.

(b) As determined in the bond resolution, the bonds of each issue shall:

(1) be dated;

(2) bear interest at the rate or rates and beginning on the dates, as authorized by law, or bear no interest;

(3) mature at the time or times, not exceeding 40 years from their date or dates; and

(4) be made redeemable before maturity at the price or prices and under the terms provided by the bond resolution.

(c) An authority may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the authority.

(d) The proceeds of each bond issue shall be disbursed in the manner and under the restrictions, if any, the authority provides in the bond resolution.

(e) Additional bonds may be issued in the same manner to pay the costs of a turnpike project or system. Unless otherwise provided in the bond resolution, the additional bonds shall be on a parity, without preference or priority, with bonds previously issued and payable from the revenue of the turnpike project or system. In addition, an authority may issue bonds for a turnpike project or system secured by a lien on the revenue of the turnpike project or system subordinate to the lien on the revenue securing other bonds issued for the turnpike project or system.

(f) If the proceeds of a bond issue exceed the cost of the turnpike project or system for which the bonds were issued, the surplus shall be segregated from the other money of the authority and used only for the purposes specified in the bond resolution.

(g) Bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(h) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

Sec. 366.112. INTERIM BONDS. (a) An authority may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) The interim bonds may be authorized and issued in accordance with this chapter, without regard to the requirements, restrictions, or procedural provisions contained in any other law.

(c) A bond resolution authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this chapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Sec. 366.113. PAYMENT OF BONDS: STATE AND COUNTY CREDIT NOT PLEDGED. (a) The principal of, interest on, and any redemption premium on bonds issued by an authority are payable solely from:

(1) the revenue of the turnpike project or system for which the bonds are issued, including tolls pledged to pay the bonds;

(2) payments made under an agreement with the commission or a local governmental entity as provided by Subchapter G;

(3) money derived from any other source available to the authority, other than money derived from a turnpike project that is not part of the same system or money derived from a different system, except to the extent that the surplus revenue of a turnpike project or system has been pledged for that purpose; and

(4) amounts received under a credit agreement relating to the turnpike project or system for which the bonds are issued.

(b) Bonds issued under this chapter do not constitute a debt of the state or any of the counties of an authority or a pledge of the faith and credit of the state or any of the counties. Each bond must contain on its face a statement to

the effect that the state, the authority, and the counties of the authority are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond, and neither the faith and credit and taxing power of the state or the counties of the authority are pledged to the payment of the principal of or interest on the bond.

(c) An authority may not incur financial obligations that cannot be paid from revenue derived from owning or operating the authority's turnpike projects and systems or from other revenue provided by law.

Sec. 366.114. EFFECT OF LIEN. (a) A lien on or a pledge of revenue from a turnpike project or system under this chapter or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond;

(2) applies to an item on hand or subsequently received;

(3) applies without physical delivery of an item or other act; and

(4) is enforceable against any person having any claim, in tort, contract, or other remedy, against the applicable authority without regard to whether the person has notice of the lien or pledge.

(b) A bond resolution is not required to be recorded except in the regular records of the authority.

Sec. 366.115. BOND INDENTURE. (a) Bonds issued under this chapter may be secured by a bond indenture between the authority and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) A bond indenture may pledge or assign the tolls and other revenue to be received but may not convey or mortgage any part of a turnpike project or system.

(c) A bond indenture may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or indentures of trust securing corporate bonds and debentures; and

(3) contain provisions the authority determines reasonable and proper for the security of the bondholders, including covenants:

(A) establishing the authority's duties relating to:

(i) the acquisition of property;

(ii) the construction, maintenance, operation, and repair of and insurance for a turnpike project or system; and

(iii) custody, safeguarding, and application of money;

(B) prescribing events that constitute default;

(C) prescribing terms on which any or all of the bonds become or may be declared due before maturity; and

(D) relating to the rights, powers, liabilities, or duties that arise on the breach of an authority's duty.

(d) The expenses incurred in carrying out a trust agreement may be treated as part of the cost of operating the turnpike project.

(e) In addition to all other rights by mandamus or other court proceeding, an owner or trustee of a bond issued under this chapter may enforce the owner's rights against an issuing authority, the authority's employees, the authority's board, or an agent or employee of the authority's board and is entitled to:

(1) require the authority and the board to impose and collect tolls, charges, and other revenue sufficient to carry out any agreement contained in the bond proceedings; and

(2) apply for and obtain the appointment of a receiver for the turnpike project or system.

Sec. 366.116. APPROVAL OF BONDS BY ATTORNEY GENERAL.

(a) An authority shall submit to the attorney general for examination a transcript of proceedings relating to bonds authorized under this chapter. The transcript shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

(c) On receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, the comptroller shall register the record of proceedings.

(d) After approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

Sec. 366.117. FURNISHING OF INDEMNIFYING BONDS OR PLEDGES OF SECURITIES. (a) A bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that an authority requires.

(b) Bonds of an authority may secure the deposit of public money of the state or a political subdivision of the state to the extent of the lesser of the face value of the bonds or their market value.

Sec. 366.118. APPLICABILITY OF OTHER LAW; CONFLICTS. All laws affecting the issuance of bonds by local governmental entities, including Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes), apply to bonds issued under this chapter. To the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

[Sections 366.119-366.160 reserved for expansion]
SUBCHAPTER E. ACQUISITION, CONSTRUCTION,
AND OPERATION OF TURNPIKE PROJECTS

Sec. 366.161. TURNPIKE PROJECTS EXTENDING INTO OTHER COUNTIES. An authority may acquire, construct, operate, maintain, expand, or extend a turnpike project in:

- (1) a county that is a part of the authority; or
- (2) a county in which the authority operates or is constructing a turnpike project if the turnpike project in the affected county is a continuation of the authority's turnpike project or system extending from an adjacent county.

Sec. 366.162. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. (a) An authority may construct or improve a turnpike project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by the commission, a political subdivision of this state, or any other local governmental entity.

(b) Except as provided by this chapter, an authority has the same powers and may use the same procedures as the commission in acquiring property.

Sec. 366.163. ACQUISITION OF PROPERTY. (a) An authority may acquire in the name of the authority public or private real and other property it determines necessary or convenient for the construction, operation, maintenance, expansion, or extension of a turnpike project or for otherwise carrying out this chapter.

(b) The property an authority may acquire under this subchapter includes all or any portion of, and rights in and to:

- (1) public or private land, streets, alleys, rights-of-way, parks, playgrounds, and reservations;
- (2) franchises;
- (3) easements;
- (4) licenses; and
- (5) other interests in real and other property.

(c) An authority may acquire real property by any method, including purchase and condemnation. An authority may purchase public or private real property on the terms and at the price the authority and the property owner consider reasonable.

(d) Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the authority are not binding against the authority and do not impair the authority's ability to use the property for a purpose authorized by this chapter. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to enjoin the authority from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek compensation for damages to the person's property under Section 17, Article I, Texas Constitution.

(e) Subsection (d) does not affect the obligation of the authority under other state law to compensate the state for acquiring or using property owned by or on behalf of the state.

Sec. 366.164. RIGHT OF ENTRY. (a) To acquire property necessary or useful in connection with a turnpike project, an authority may enter any real

property, water, or premises to make a survey, geotechnical evaluation, sounding, or examination.

(b) An entry under Subsection (a) is not:

(1) a trespass; or

(2) an entry under a pending condemnation proceeding.

(c) The authority shall make reimbursements for any actual damages to real property, water, or premises that result from an activity described by Subsection (a).

Sec. 366.165. CONDEMNATION OF REAL PROPERTY. (a) Subject to Subsection (c), an authority may acquire public or private real property in the name of the authority by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if:

(1) the authority and the property owner cannot agree on a reasonable price for the property; or

(2) the property owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) An authority may condemn real property that the authority determines is:

(1) necessary or appropriate to construct or to efficiently operate a turnpike project;

(2) necessary to restore public or private property damaged or destroyed, including property necessary or convenient to mitigate an environmental effect that directly results from the construction, operation, or maintenance of a turnpike project;

(3) necessary for access, approach, and interchange roads;

(4) necessary to provide proper drainage and ground slope for a turnpike project; or

(5) necessary otherwise to implement this chapter.

(c) An authority may construct a supplemental facility only on real property the authority purchases.

(d) An authority's acquisition of any real or other property of the commission under this section or any other section of this chapter, or an authority's relocation, rerouting, disruption, or alteration of any facility of the commission is considered a conversion of a state highway under Section 366.035 and is subject to all requirements and approvals of a conversion under that section.

Sec. 366.166. DECLARATION OF TAKING. (a) An authority may file a declaration of taking with the clerk of the court:

(1) in which the authority files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(b) An authority may not file the declaration of taking:

(1) before the 91st day after the date the condemnation petition has been filed; or

(2) after the special commissioners have made an award in the condemnation proceeding.

(c) The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the authority can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a turnpike project.

(d) A deposit to the registry of the court of an amount equal to the appraised fair market value, as determined by the authority, of the property to be condemned and any damages to the remainder must accompany the declaration of taking.

(e) Instead of the deposit under Subsection (d), at its option, the authority may, concurrently with the declaration of a taking, tender in favor of the owner of the subject property a bond or other security in an amount sufficient to secure the owner for the value of the property taken and damages to remaining property, if the authority obtains the court's approval.

(f) The date on which the declaration is filed is the date of taking for the purpose of assessing the value of the property taken and damages to any remaining property to which an owner is entitled.

(g) An owner may draw upon the deposit held by the court under Subsection (d) on the same terms and conditions as are applicable under state law to a property owner's withdrawal of a commissioners' award deposited under Section 21.021(a)(1), Property Code.

(h) A property owner that is a defendant in an eminent domain action filed by an authority under this chapter has 20 days after the date of service of process of both a condemnation petition and a notice of declaration of taking to give notice to the court in which the action is pending of the defendant's desire to have the condemnation petition placed on the court's docket in the same manner as other cases pending in the court. On receipt of timely notice from the defendant, the court in which the eminent domain action is pending shall place the case on its docket in the same manner as other cases pending in the court.

Sec. 366.167. POSSESSION OF PROPERTY. (a) Immediately on the filing of a declaration of taking, an authority shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The authority shall file evidence of the service with the clerk of the court. On filing of that evidence, the authority may take possession of the property on the same terms as if a commissioners hearing had been conducted, pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, an authority may not take possession before the 31st day after the date of service under Subsection (a).

(c) A property owner or tenant who refuses to vacate the property or yield possession is subject to forcible entry and detainer under Chapter 24, Property Code.

Sec. 366.168. SEVERANCE OF REAL PROPERTY. (a) If an authority's turnpike project severs a property owner's real property, the authority shall pay:

(1) the value of the property acquired; and

(2) the damages, if any, to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) At its option, an authority may negotiate for and purchase the severed real property or any part of the severed real property if the authority and the property owner agree on terms for the purchase. An authority may sell and dispose of severed real property that it determines is not necessary or useful to the authority. Severed property must be appraised before being offered for sale by an authority.

Sec. 366.169. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) An authority may use real property, including submerged land, streets, alleys, and easements, owned by the state or a local governmental entity that the authority considers necessary for the construction or operation of a turnpike project.

(b) The state or a local governmental entity having charge of public real property may consent to the use of the property for a turnpike project.

(c) Except as provided by Section 366.035, the state or a local governmental entity may convey, grant, or lease to an authority real property, including highways and other real property already devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish the authority's purposes, including the construction or operation of a turnpike project. A conveyance, grant, or lease under this section may be made without advertising, court order, or other action other than the normal action of the state or local governmental entity necessary for a conveyance, grant, or lease.

(d) This section does not deprive the School Land Board of the power to execute leases for the development of oil, gas, and other minerals on state-owned real property adjoining a turnpike project or in tidewater limits. The leases may provide for directional drilling from the adjoining property or tidewater area.

(e) This section does not affect the obligation of the authority under other state law to compensate the state for acquiring or using property owned by or on behalf of the state. An authority's use of property owned by or on behalf of the state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Sec. 366.170. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY. (a) Except as provided by Section 366.035 or Section 366.165(c), an authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, except for:

(1) parks and playgrounds;

(2) property owned by or on behalf of the state that under state law requires compensation to the state for the use or acquisition of the property; or

(3) as provided by this chapter.

(b) Public property damaged in the exercise of powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable.

(c) An authority has full easements and rights-of-way through, across, under, and over any property owned by the state or any local governmental entity that are necessary or convenient to construct, acquire, or efficiently operate a turnpike project or system under this chapter. This subsection does not affect the obligation of the authority under other state law to compensate the state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of the state. An authority's use of property owned by or on behalf of the state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Sec. 366.171. PUBLIC UTILITY FACILITIES. (a) An authority may adopt rules for the installation, construction, operation, maintenance, repair, renewal, relocation, and removal of a public utility facility in, on, along, over, or under a turnpike project.

(b) If an authority determines it is necessary that a public utility facility located in, on, along, over, or under a turnpike project be relocated in the turnpike project, removed from the turnpike project, or carried along or across the turnpike project by grade separation, the owner or operator of the utility facility shall relocate or remove the facility in accordance with the requirements of the authority and in a manner that does not unreasonably impede the design, financing, construction, operation, or maintenance of the turnpike project. The authority, as a part of the cost of the turnpike project or the cost of operating the turnpike project, shall pay the cost of the relocation, removal, or grade separation, including the cost of:

(1) installation of the facility in a new location;

(2) damages incurred by the utility to its facilities and services;

(3) interests in real property and other rights acquired to accomplish the relocation or removal; and

(4) maintenance of grade separation structures.

(c) The authority may reduce the total costs to be paid by the authority under Subsection (b) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation exceeds the limit agreed to by the owner or operator of the public utility facility and the authority. The owner or operator of the facility and the authority may not unreasonably withhold approval for an agreement. If an owner or operator of a public utility facility does not timely remove or relocate as required under Subsection (b), the authority may do so at the expense of the public utility. If the authority determines that a delay in relocation is the result of circumstances beyond the control of the utility, full costs shall be paid by the authority.

(d) Chapter 228, Acts of the 51st Legislature, Regular Session, 1949 (Article 1436a, Vernon's Texas Civil Statutes), applies to the

erection, construction, maintenance, and operation of lines and poles owned by a corporation described by Section 1 of that Act over, under, across, on, and along a turnpike project or system constructed by an authority. An authority has the powers and duties delegated to the commissioners court by that Act, and an authority has exclusive jurisdiction and control of utilities located in its rights-of-way.

(e) Chapter 470, Acts of the 52nd Legislature, Regular Session, 1951 (Article 1436b, Vernon's Texas Civil Statutes), applies to the laying and maintenance of facilities used for conducting gas by a person, firm, or corporation or municipality described in Section 1 of that Act through, under, along, across, and over a turnpike project or system constructed by an authority except as otherwise provided by this section. An authority has the power and duties delegated to the commissioners court by that Act and an authority has exclusive jurisdiction and control of utilities located in its right-of-way.

(f) The laws of this state applicable to the use of public roads, streets, and waters by a telephone and telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone and telegraph corporation over, under, across, on, and along a turnpike project or system constructed by an authority under this chapter.

(g) In this section "public utility facility" means a track, pipe, main, conduit, cable, wire, tower, pole, or other item of plant or equipment or an appliance of a public utility or other person.

Sec. 366.172. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. (a) An authority may lease, sell, or convey in another manner a turnpike project to the department, a county, or a local government corporation created under Chapter 431.

(b) An agreement to lease, sell, or convey a turnpike project under this section must provide for the discharge and final payment or redemption of the authority's outstanding bonded indebtedness for the turnpike project and must not be prohibited under the bond proceedings applicable to the system, if any, of which the turnpike project is a part.

Sec. 366.173. REVENUE. (a) An authority may:

(1) impose tolls for the use of each of its turnpike projects and systems and the different parts or sections of each of its turnpike projects and systems; and

(2) contract with a person for the use of part of a turnpike project or system or lease or sell part of a turnpike project or system, including the right-of-way adjoining the paved portion, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, parking facility, railroad track, billboard, livestock pasturage, telephone line or facility, telecommunication line or facility, data transmission line or facility, and electric line or facility, under terms set by the authority.

(b) Tolls must be set so that the aggregate of tolls from an authority's turnpike project or system, together with other revenue of the turnpike project or system:

(1) provides revenue sufficient to pay:

(A) the cost of maintaining, repairing, and operating the turnpike project or system; and

(B) the principal of and interest on the bonds issued for the turnpike project or system as those bonds become due and payable; and

(2) creates reserves for a purpose listed under Subdivision (1).

(c) Tolls are not subject to supervision or regulation by any state agency or other local governmental entity.

(d) Tolls and other revenue derived from a turnpike project or system for which bonds are issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the bond proceedings, shall be set aside at regular intervals as may be provided in the bond resolution or trust agreement in a sinking fund that is pledged to and charged with the payment of:

(1) interest on the bonds as it becomes due;

(2) principal of the bonds as it becomes due;

(3) necessary charges of paying agents for paying principal and interest; and

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided by the bond proceedings.

(e) Use and disposition of money to the credit of the sinking fund is subject to the bond proceedings.

(f) To the extent permitted under the applicable bond proceedings, revenue from one turnpike project of an authority may be used to pay the cost of other turnpike projects of the authority.

(g) An authority may not use revenue from its turnpike projects in a manner not authorized by this chapter. Revenue generated from a turnpike project may not be applied for a purpose or to pay a cost other than a cost or purpose that is reasonably related to or anticipated to be for the benefit of a turnpike project.

Sec. 366.174. AUTHORITY REVOLVING FUND. (a) An authority may maintain a revolving fund to be held in trust by a banking institution chosen by the authority separate from any other funds and administered by the authority's board.

(b) An authority may transfer into its revolving fund money from any permissible source, including:

(1) money from a turnpike project if the transfer does not diminish the money available for the project or the system, if any, of which it is a part to less than an amount required to be retained by the bond proceedings pertaining to the project or system;

(2) money received by the authority from any source and not otherwise committed, including money from the transfer of a turnpike project or system or sale of authority assets;

(3) advances authorized under Section 52-b, Article III, Texas Constitution; and

(4) contributions, loans, grants, or assistance from the United States, another state, a political subdivision of this state, a foreign governmental

entity, including the United Mexican States or a state of the United Mexican States, a local governmental entity, any private enterprise, or any person.

(c) The authority may use money in the revolving fund to:

(1) finance the acquisition, construction, maintenance, or operation of a turnpike project or system, including the extension, expansion, or improvement of a project or system;

(2) provide matching money required in connection with any federal, state, local, or private aid, grant, or other funding, including aid or funding by or with public-private partnerships;

(3) provide credit enhancement either directly or indirectly for bonds issued to acquire, construct, extend, expand, or improve a turnpike project or system;

(4) provide security for or payment of future or existing debt for the design, acquisition, construction, operation, maintenance, extension, expansion, or improvement of a turnpike project or system;

(5) borrow money and issue promissory notes or other indebtedness payable out of the revolving fund for any purpose authorized by this chapter; and

(6) provide for any other reasonable purpose that assists in the financing of an authority as authorized by this chapter.

(d) Money spent or advanced from the revolving fund for a turnpike project or system must be reimbursed from the money of that turnpike project or system, and there must be a reasonable expectation of such repayment at the time of authorization.

Sec. 366.175. USE OF SURPLUS REVENUE. The board of an authority may by resolution authorize the use of surplus revenue of a turnpike project or system to pay the costs of another turnpike project or system other than a project financed under Subchapter G. The board may in the resolution prescribe terms for the use of the revenue, including the pledge of the revenue, but may not take an action under this section that violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the surplus revenue.

Sec. 366.176. EXEMPTION FROM TAXATION OR ASSESSMENT. (a) An authority is exempt from taxation of or assessments on:

(1) a turnpike project or system;

(2) property the authority acquires or uses under this chapter; or

(3) income from property described by Subdivision (1) or (2).

(b) An authority is exempt from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by a county, municipality, road and utility district, river authority, any other state or local governmental entity, or any property owners' or home owners' association.

Sec. 366.177. ACTIONS AFFECTING EXISTING ROADS. (a) An authority may impose a toll for transit over an existing free road, street, or public highway transferred to the authority under this chapter.

(b) An authority may construct a grade separation at an intersection of a turnpike project with a railroad or highway and change the line or grade of a highway to accommodate the design of the grade separation. The action

may not affect a segment of the state highway system without the department's consent. The authority shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the turnpike project.

(c) If feasible, an authority shall provide access to properties previously abutting a county or other public road that is taken for a turnpike project and shall pay abutting property owners the expenses or any resulting damages for a denial of access to the road.

Sec. 366.178. FAILURE OR REFUSAL TO PAY TOLL. (a) A motor vehicle other than a police or emergency vehicle that passes through a toll collection facility, whether driven or towed, shall pay the proper toll.

(b) A person who fails or refuses to pay a toll provided for the use of a project is liable for a fine not to exceed \$250, plus an administrative fee incurred in connection with the violation.

(c) If a person fails to pay the proper toll:

(1) on issuance of a notice of nonpayment, the registered owner of the nonpaying vehicle shall pay both the proper toll and the administrative fee; and

(2) an authority may charge an administrative fee of not more than \$100 to recover the cost of collecting the unpaid toll.

(d) Notice of nonpayment under Subsection (c)(1) shall be sent by first-class mail and may not require payment of the proper toll and the administrative fee before the 30th day after the date the notice is mailed. The registered owner shall pay a separate toll and administrative fee for each nonpayment.

(e) If the registered owner of the vehicle fails to pay the proper toll and administrative fee in the time specified by the notice, the owner shall be cited as for other traffic violations as provided by law, and the owner shall pay a fine of not more than \$250 for each nonpayment.

(f) In the prosecution of a violation for nonpayment, proof that the vehicle passed through a toll collection facility without payment of the proper toll together with proof that the defendant was the registered owner or the driver of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence.

(g) The court of the local jurisdiction in which the violation occurs may assess and collect the fine in addition to any court costs. The court shall collect the proper toll and administrative fee and forward the toll and fee to the authority.

(h) It is a defense to nonpayment under this section that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

(1) the occurrence of the failure to pay; or

(2) eight hours after the discovery of the theft.

(i) A registered owner who is the lessor of a vehicle for which a notice of nonpayment has been issued is not liable if, not later than the 30th day after

the date the notice of nonpayment is mailed, the registered owner provides to the authority a copy of the lease agreement covering the vehicle on the date of the nonpayment. The name and address of the lessee must be clearly legible. If the lessor timely provides the required information, the lessee of the vehicle on the date of the violation is considered to be the owner of the vehicle for purposes of this section. The lessee is subject to prosecution for failure to pay the proper toll if the authority sends a notice of nonpayment to the lessee by first-class mail not later than the 30th day after the date of the receipt of the information from the lessor.

Sec. 366.179. USE AND RETURN OF TRANSPONDERS. (a) For purposes of this section, a transponder is a device placed on or within an automobile that is capable of transmitting or receiving information used to assess or collect tolls. A transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

(b) Any law enforcement or peace officer of an entity with which an authority has contracted under Section 366.182(c) may seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. An insufficiently funded transponder may not be seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

Sec. 366.180. CONTROLLED ACCESS TO TURNPIKE PROJECTS.

(a) An authority may designate a turnpike project or a portion of a project as a controlled-access toll road.

(b) An authority by order may:

(1) prohibit the use of or access to or from a turnpike project by a motor vehicle, bicycle, other vehicle, or a pedestrian;

(2) deny access to or from:

(A) its turnpike projects;

(B) real property adjacent to its turnpike projects; or

(C) a street, road, alley, highway, or other public or private way intersecting its turnpike projects;

(3) designate locations on its turnpike projects at which access to or from the toll road is permitted;

(4) control, restrict, and determine the type and extent of access permitted at a designated location of access to the turnpike projects; or

(5) erect appropriate protective devices to preserve the utility, integrity, and use of its turnpike projects.

(c) Denial of access to or from a segment of the state highway system is subject to the approval of the commission.

Sec. 366.181. PROMOTION OF TOLL ROADS. An authority may promote the use of its turnpike projects by appropriate means, including advertising or marketing as the authority determines appropriate.

Sec. 366.182. OPERATION OF TURNPIKE PROJECT. (a) An authority shall operate its turnpike projects through a force of toll-takers and other employees of the authority or through services contracted under Subsection (b) or (c).

(b) An authority may enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and

services to design, construct, operate, maintain, expand, enlarge, or extend the authority's turnpike projects.

(c) An authority may contract with any state or local governmental entity for the services of peace officers of that agency.

Sec. 366.183. AUDIT. An authority shall have a certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a turnpike project.

Sec. 366.184. DISADVANTAGED BUSINESSES. (a) Consistent with general law, an authority shall:

(1) set goals for the award of contracts to disadvantaged businesses and attempt to meet the goals;

(2) attempt to identify disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and

(3) give disadvantaged businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

(b) This section does not exempt an authority from competitive bidding requirements provided by other law.

Sec. 366.185. COMPETITIVE BIDDING. (a) A contract made by an authority that requires the expenditures of public funds for the construction or maintenance of a turnpike project must be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

(b) The authority shall adopt rules governing the award of contracts through competitive bidding.

[Sections 366.186-366.250 reserved for expansion]

SUBCHAPTER F. GOVERNANCE

Sec. 366.251. BOARD OF DIRECTORS. (a) An authority is governed by a board of directors.

(b) The commissioners court of each county of the authority shall appoint one director to serve on the board. The governor shall appoint three directors to serve on the board.

(c) Directors shall be divided into two groups. To the greatest degree possible, each group shall contain an equal number of directors. Directors shall serve terms of two years, except that one group of directors of the initial board of an authority shall serve for a term of one year.

(d) Two directors appointed by the governor must have resided in a county of the authority for at least one year before the person's appointment. One director appointed by the governor must have resided in a county adjacent to a county of the authority for at least one year before the person's appointment. Each director appointed by a commissioners court must have resided in that county for at least one year before the person's appointment.

(e) All appointments to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin.

(f) An elected official is not eligible to serve as a director.

(g) A vacancy in a position shall be filled promptly by the entity that made the appointment.

(h) Each director has equal status and may vote.

(i) The board of an authority shall select one director as the presiding officer of the board to serve in that capacity until the person's term as a director expires. The board shall elect one director as assistant presiding officer. The board shall select a secretary and treasurer, neither of whom need be a director.

(j) The vote of a majority attending a board meeting is necessary for any action taken by the board. If a vacancy exists on a board, the majority of directors serving on the board is a quorum.

Sec. 366.252. CONFLICT OF INTEREST. (a) A person is not eligible to serve on the board of an authority if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of toll road construction, maintenance, or operation;

(2) is employed by or participates in the management of a business entity or other organization regulated by the authority or receiving money from the authority;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the authority, other than compensation for acquisition of turnpike right-of-way;

(4) uses or receives a substantial amount of tangible goods, services, or money from the authority, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses, or for compensation for acquisition of turnpike right-of-way;

(5) is an officer, employee, or paid consultant of a Texas trade association in the field of road construction, maintenance, or operation; or

(6) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the authority.

(b) A person may not act as the general counsel to an authority if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the authority.

(c) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Sec. 366.253. SURETY BONDS. (a) Before beginning a term, each director shall execute a surety bond in the amount of \$25,000, and the secretary and treasurer shall execute a surety bond in the amount of \$50,000.

(b) Each surety bond must be:

(1) conditioned on the faithful performance of the duties of office;

(2) executed by a surety company authorized to transact business in this state; and

(3) filed with the secretary of state's office.

(c) The authority shall pay the expense of the bonds.

Sec. 366.254. REMOVAL OF DIRECTOR. (a) It is a ground for removal of a director from the board if the director:

(1) did not have at the time of appointment the qualifications required by Section 366.251(d);

(2) whether at the time of appointment or at any time during the director's term, is ineligible under Section 366.251(f) or 366.252 to serve as a director;

(3) cannot discharge the director's duties for a substantial part of the term for which the director is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a director exists.

(c) If the administrative head of the authority has knowledge that a potential ground for removal exists, that person shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the person that appointed the director that a potential ground for removal exists.

Sec. 366.255. COMPENSATION OF DIRECTOR. Each director is entitled to reimbursement for the director's actual expenses necessarily incurred in the performance of the director's duties. A director is not entitled to any additional compensation for the director's services.

Sec. 366.256. EVIDENCE OF AUTHORITY ACTIONS. Actions of an authority are the actions of its board and may be evidenced in any legal manner, including a board resolution.

Sec. 366.257. PUBLIC ACCESS. An authority shall:

(1) make and implement policies that provide the public with a reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the authority; and

(2) prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the authority's programs.

Sec. 366.258. INDEMNIFICATION. (a) An authority may indemnify one or more of its directors or officers for necessary expenses and costs, including attorney's fees, incurred by the directors or officers in connection with any claim asserted against the directors or officers in their respective capacities as directors or officers.

(b) If an authority does not fully indemnify a director or officer as provided by Subsection (a), the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity may assess indemnity against the authority, its receiver, or trustee only if the court finds that, in connection with the claim, the director or officer is not guilty of negligence or misconduct.

(c) A court may not assess indemnity under Subsection (b) for an amount paid by the director or officer to the authority.

(d) This section applies to a current or former director or officer of the authority.

Sec. 366.259. PURCHASE OF LIABILITY INSURANCE. (a) An authority shall insure its officers and employees from liability arising from the use, operation, or maintenance of equipment that is used or may be used in connection with the laying out, construction, or maintenance of the authority's turnpike projects.

(b) Insurance coverage under this section must be provided by the purchase of a policy of liability insurance from a reliable insurance company authorized to do business in this state. The form of the policy must be approved by the commissioner of insurance.

(c) This section is not a waiver of immunity of the authority or the counties in an authority from liability for the torts or negligence of an officer or employee of an authority.

(d) In this section, "equipment" includes an automobile, motor truck, trailer, aircraft, motor grader, roller, tractor, tractor power mower, and other power equipment.

Sec. 366.260. CERTAIN CONTRACTS AND SALES PROHIBITED.

(a) A director, agent, or employee of an authority may not:

(1) contract with the authority; or

(2) be directly or indirectly interested in:

(A) a contract with the authority; or

(B) the sale of property to the authority.

(b) A person who violates Subsection (a) is liable for a civil penalty to the authority not to exceed \$1,000.

(c) Subsection (a) does not apply to the sale of turnpike right-of-way to an authority.

Sec. 366.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) An authority shall make a strategic plan for its operations. A majority of the commissioners courts of the counties composing the authority shall by concurrent resolution determine the types of information required to be included in the strategic plan. Each even-numbered year, an authority shall issue a plan covering the next five fiscal years, beginning with the next odd-numbered fiscal year.

(b) Not later than March 31 of each year, an authority shall file with the commissioners court of each county of the authority a written report on the authority's activities describing all turnpike revenue bond issuances anticipated for the coming year, the financial condition of the authority, all project schedules, and the status of the authority's performance under the most recent strategic plan. At the invitation of a commissioners court of a county in the authority, representatives of the board and the administrative head of an authority shall appear before the commissioners court to present the report and receive questions and comments.

(c) The authority shall give notice to the commissioners court of each county of the authority not later than the 90th day before the date of issuance of revenue bonds.

Sec. 366.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Chapter 551, Government Code, does not prohibit any open or closed meeting

of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(c) Notice of a telephone conference call meeting that by law must be open to the public must specify the location of the meeting. The location must be a conference room of the authority or other facility in a county of the authority that is accessible to the public.

(d) Each part of the telephone conference call meeting that by law must be open to the public shall be audible to the public at the location specified in the notice and shall be tape-recorded or documented by written minutes. On conclusion of the meeting, the tape recording or the written minutes of the meeting shall be made available to the public.

[Sections 366.263-366.300 reserved for expansion]

SUBCHAPTER G. AID FOR REGIONAL TURNPIKE PROJECTS

Sec. 366.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE PROJECTS. (a) To the extent permitted by the Texas Constitution, the department may agree with an authority to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system on terms agreed on by the commission or department, as applicable, and the authority. The agreement may not be inconsistent with the rights of the bondholders or persons operating the turnpike project under a lease or other contract.

(b) The department may use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies under Subsection (a).

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. Money from the state highway fund spent under this section must be repaid from tolls or other revenue of the turnpike project or system on which the money from the state highway fund was expended.

(d) The commission or department may use federal money for any purpose described by this chapter.

Sec. 366.302. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE TURNPIKE PROJECTS. (a) An authority may enter into an agreement with a public or private entity, including a toll road corporation, the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, a local governmental entity, or another political subdivision, to permit the entity, jointly with the authority, to study the feasibility of a turnpike project or system or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a turnpike project or system.

(b) An authority has broad discretion to negotiate provisions in a development agreement with a private entity. The provisions may include provisions relating to:

(1) the design, financing, construction, maintenance, and operation of a turnpike project or system in accordance with standards adopted by the authority; and

(2) professional and consulting services to be rendered under standards adopted by the authority in connection with a turnpike project or system.

(c) An authority may not incur a financial obligation on behalf of, or otherwise guarantee the obligations of, a private entity that constructs, maintains, or operates a turnpike project or system.

(d) An authority or a county in an authority is not liable for any financial or other obligation of a turnpike project solely because a private entity constructs, finances, or operates any part of a turnpike project or system.

(e) An authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

Sec. 366.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) A local governmental entity other than a nonprofit corporation may, consistent with the Texas Constitution, issue bonds or enter into and make payments under agreements with an authority to acquire, construct, maintain, or operate a turnpike project or system. The entity may levy and collect taxes to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds.

(b) In addition to the powers provided by Subsection (a), a local governmental entity may, within any applicable constitutional limitations, agree with an authority to issue bonds or enter into and make payments under an agreement to acquire, construct, maintain, or operate any portion of a turnpike project or system of that authority.

(c) To make payments under an agreement under Subsection (b), to pay the interest on bonds issued under Subsection (b), or to provide a sinking fund for the bonds or the contract, a local governmental entity may:

(1) pledge revenue from any available source, including annual appropriations;

(2) levy and collect taxes; or

(3) provide for a combination of Subdivisions (1) and (2).

(d) The term of an agreement under this section may not exceed 40 years.

(e) Any election required to permit action under this subchapter must be held in conformity with Chapter 1, Title 22, Revised Statutes, or other law applicable to the local governmental entity.

Sec. 366.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An authority may enter into any agreement necessary or convenient to achieve the purposes of this subchapter.

SECTION 7.26. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.132 to read as follows:

Sec. 411.132. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: REGIONAL TOLLWAY AUTHORITIES. (a) A regional tollway authority governed by Chapter 366, Transportation Code, is entitled to obtain from the department criminal history record information maintained by the department that pertains to a person who is:

(1) employed by the regional tollway authority; or
(2) an applicant for employment with the regional tollway authority.
(b) Criminal history record information obtained under Subsection (a)
may not be released or disclosed to any person except in a criminal
proceeding, in a hearing conducted by the regional tollway authority, on court
order, or with the consent of the person who is the subject of the criminal
history record information.

SECTION 7.27. (a) Notwithstanding Section 366.031, Transportation Code, as added by this Act, the North Texas Tollway Authority is established as a regional tollway authority under Chapter 366, Transportation Code, as added by this Act.

(b) The North Texas Tollway Authority consists of all territory in Collin, Dallas, Denton, and Tarrant counties. The operations of the authority may extend to other counties as permitted under Section 366.161, Transportation Code, as added by this Act, and the jurisdiction of the authority may be expanded to include other counties under Section 366.031, Transportation Code, as added by this Act. As of the effective date of this Act, Cooke, Ellis, Fannin, Grayson, Hunt, Johnson, Kaufman, Parker, Rockwall, and Wise counties are the only counties that meet the geographical qualifications for future inclusion in the North Texas Tollway Authority.

(c) Notwithstanding Section 366.251, Transportation Code, as added by this Act, the initial board of directors of the North Texas Tollway Authority is composed of nine directors as follows:

(1) three directors appointed by the governor, two of whom must have resided in a county of the authority for at least one year before the person's appointment and one of whom must have resided in Parker County, Ellis County, or Johnson County for at least one year before the person's appointment;

(2) one director appointed by the commissioners court of each county in the authority; and

(3) the county judges of two of the counties of the authority, as agreed by a majority of the county judges of the authority.

(d) The terms of the initial directors of the North Texas Tollway Authority begin on September 1, 1997. The county judges serving as initial directors shall each serve a one-year term. At the expiration of that term, the seats held by the county judges are not refilled, and the number of directors composing the board is reduced to seven but may be increased if additional counties join the authority.

(e) One of the directors of the North Texas Tollway Authority appointed to the initial board by the governor serves a one-year term. Each successor to that director shall be appointed by the governor for a two-year term.

(f) The two directors appointed to the initial board of the North Texas Tollway Authority by the commissioners courts of the counties whose county judges serve as initial directors each serve a one-year term. Each successor to those directors shall be appointed for a two-year term. The remaining initial directors serve two-year terms.

SECTION 7.28. Sections 361.003, 361.038, 361.039, 361.040, 361.041, 361.044, 361.045, 361.047, 361.048, 361.139, 361.190, and 361.284, and Subsection (e), Section 361.331, Transportation Code, are repealed.

ARTICLE 8. TRANSITION, EFFECTIVE DATE, AND EMERGENCY

SECTION 8.01. (a) The Texas Turnpike Authority is abolished and the Texas Turnpike Authority division of the Texas Department of Transportation is created on the effective date of this Act. Except as provided by Subsections (b) and (c) of this section, all assets, rights, and obligations of the Texas Turnpike Authority are transferred to the division.

(b) The North Texas Tollway Authority shall succeed to all assets, rights, and other property of the Texas Turnpike Authority located in Collin, Dallas, Denton, or Tarrant County, including all assets and rights that relate to the Dallas North Tollway, the Addison Airport Toll Tunnel, the President George Bush Turnpike, the Mountain Creek Lake Bridge, all existing and proposed extensions to those projects, the Texas Turnpike Authority administration building, and all other facilities, improvements, leaseholds, funds, accounts, and investments related to a project listed in this subsection.

(c) The North Texas Tollway Authority shall assume and become liable for all duties and obligations of the Texas Turnpike Authority related to the assets, rights, and properties transferred under Subsection (b) of this section, including contracts and bonds secured by the revenues of the assets. The North Texas Tollway Authority is obligated to comply with all the assumed obligations to the same extent as the Texas Turnpike Authority.

(d) An employee of the Texas Turnpike Authority may elect to become an employee of either the Texas Turnpike Authority division of the Texas Department of Transportation or the North Texas Tollway Authority on the effective date of this Act, subject to the employment openings and requirements of those entities.

(e) A rule or regulation adopted by the Texas Turnpike Authority relating to the operation of a turnpike in Collin, Dallas, Denton, or Tarrant County before the effective date of this Act that is not inconsistent with this Act remains in effect as a rule or regulation of the North Texas Tollway Authority until superseded by action of that entity.

SECTION 8.02. (a) As additional consideration for the transfer of the properties described in Subsection (b) of Section 8.01 of this Act, the North Texas Tollway Authority shall pay to the Texas Turnpike Authority division of the Texas Department of Transportation \$10 million not later than December 31, 1997. In making the payment, the authority and the department shall ensure that following the payment, the authority is in compliance with all bond resolutions, bond indentures, credit agreements, and all other agreements assumed by the authority and that reserves held by the authority as required under or in connection with the resolutions, indentures, credit agreements, and other agreements shall be maintained at a level consistent with the Texas Turnpike Authority's historical practices.

(b) The North Texas Tollway Authority shall hire an independent auditor to conduct an audit of the records of the authority. The audit must identify all funds in the possession of the authority that belong to the Texas Turnpike Authority division of the Texas Department of Transportation. Except for the transfer required by Subsection (a) of this section, the authority must transfer to the department all funds identified as belonging to the department not later than December 31, 1998.

SECTION 8.03. The North Texas Tollway Authority is a successor agency to the Texas Turnpike Authority for all purposes, including for the purpose of Section 52-b, Article III, Texas Constitution, concerning all assets, rights, other property, duties, and obligations transferred to the authority under Subsection (b) of Section 8.01 of this Act. The Texas Department of Transportation is a successor to the Texas Turnpike Authority for all purposes concerning assets, rights, other property, duties, and obligations not transferred to the North Texas Tollway Authority under Subsection (b) of Section 8.01 of this Act. Any existing agreement by and between the Texas Turnpike Authority and the state, the Texas Transportation Commission, the Texas Department of Transportation, the Federal Highway Administration, the United States Department of Transportation, any other federal or state governmental entity, or any local governmental entity that pertains to an asset, right, or obligation transferred to the North Texas Tollway Authority under this Act is binding on, benefits, and is fully enforceable by and against the North Texas Tollway Authority as successor to the Texas Turnpike Authority.

SECTION 8.04. The changes in law made by this Act in the qualifications of members of the Texas Transportation Commission or the Texas Motor Vehicle Commission do not affect the entitlement of a member serving on one of those commissions before September 1, 1997, to continue to carry out the functions of the commission for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 1997. This Act does not prohibit a person who is a member of the Texas Transportation Commission on September 1, 1997, from being reappointed to that commission if the person has the qualifications required for a member under Chapter 201, Transportation Code, as amended by this Act. This Act does not prohibit a person who is a member of the Texas Motor Vehicle Commission on September 1, 1997, from being reappointed to that commission if the person has the qualifications required for a member under the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), as amended by this Act.

SECTION 8.05. (a) The governor shall appoint the six directors to the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation for initial terms as follows: two to serve terms expiring February 15, 1999, two to serve terms expiring February 15, 2001, and two to serve terms expiring February 15, 2003.

(b) Until a majority of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation has been appointed and has qualified, the members of the board of directors of the Texas Turnpike Authority serving immediately before the effective date of this section shall exercise the authority granted to the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation. When a majority of the members of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation has been appointed and has qualified and until all appointees have taken office, a quorum of the board is a majority of the number of directors who have qualified.

SECTION 8.06. This Act takes effect September 1, 1997.

SECTION 8.07. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1

Amend CSSB 370 in Section 1.23, Section 223.041, Transportation Code, as follows:

1. In subsection (b), between "setting" and "level" delete "the" and insert "a minimum".

2. In subsection (c), between "reaches a" and "of 35" delete "goal" and insert "minimum".

3. In subsection (c) delete "enacted by the 75th Legislature at its regular session in 1997" and insert "for that biennium".

Floor Amendment No. 2

CSSB 370 is amended by inserting a new section 1.35 to read as follows and renumbering the current section 1.35 and all following sections as appropriate:

SECTION 1.35. Section 365.013, Transportation Code, is amended to read as follows:

SECTION 365.013. Nature and Location of Road and Structure.

(a) A toll road must be all or part of a state highway or a major arterial road that connects two state highways, two federal highways, or a combination of state and federal highways.

(b) A district may not construct a toll structure within two miles of the intersection of the toll road and a federal highway unless the toll structure is located in a county with a population of at least 2.1 million or a county adjacent thereto.

Floor Amendment No. 3

Amend CSSB 370 as follows:

(1) In Article 1 of the bill add a new appropriately numbered section to read as follows and renumber the remaining sections as appropriate:

SECTION 1.____. Section 201.051(e), Transportation Code, is repealed.

(2) In SECTION 7.06 of the bill, amended Section 361.033(a)(3), Transportation Code (page 59, lines 19-20, house committee report), strike ", other than compensation for acquisition of turnpike right-of-way" and substitute "[~~other than compensation for acquisition of turnpike right-of-way~~]".

(3) In SECTION 7.25 of the bill, proposed Section 366.260, Transportation Code (page 124, lines 19-20, house committee report), strike Subsection (c).

Floor Amendment No. 5

Amend CSSB 370 by adding new Section 1.07, and renumbering other sections in Article 1 accordingly:

SECTION 1.07. Section 201.301(a), Transportation Code, is amended to read as follows:

(a) The commission shall ~~employ~~ elect an executive director for the department. The director ~~may~~ must be a registered professional engineer in this state and ~~must have demonstrated executive and organizational ability experienced and skilled in transportation planning, development, construction and maintenance.~~

Floor Amendment No. 6

Amend CSSB 370 in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.610 to read as follows:

Sec. 201.610. HIGHWAY SOUND BARRIERS. The department may erect a sound barrier to reduce the noise from a road or highway in the state highway system at any location the department determines is appropriate, including along the right-of-way of a railroad that runs parallel or adjacent to a road or highway.

Floor Amendment No. 7

Amend CSSB 370 in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.611 to read as follows:

Sec. 201.611. COORDINATION OF FLOOD CONTROL. In the construction of its highway projects, the department shall by rule adopt policies and procedures to minimize the impact of flooding. The rules must include provisions for coordination with local flood control authorities.

Floor Amendment No. 8

Amend CSSB 370, in Article 1 of the bill, by adding a new section to Article 1, appropriately numbered, to read as follows, and renumbering subsequent sections of Article 1 accordingly:

SECTION 1.____. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.2035 to read as follows:

Sec. 201.2035. ACCOUNTING STRUCTURE. The department shall create and maintain an accounting structure for roadway and warehouse inventory of the department. The accounting structure must provide for the accounting for lost or destroyed materials.

Floor Amendment No. 9

Amend CSSB 370 in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.708 to read as follows:

Sec. 201.708. USE OF CERTAIN COSTS IN DETERMINING PRIVATIZATION GOALS. The department may not include any costs not directly related to highway maintenance in reporting its compliance with privatization goals established for highway maintenance.

Floor Amendment No. 10

Amend CSSB 370 in Section 201.705(a), Transportation Code, as added by SECTION 1.11 of the bill, (House committee report, page 6, line 12) between "conduct" and "a", by inserting ", using fully allocated cost accounting,".

Floor Amendment No. 11

CSSB 370 is amended by inserting a new Section 1.12 to read as follows and renumbering the current Section 1.12 and all following sections as appropriate:

SECTION 1.12. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.706 to read as follows:

Sec. 201.706. Local Government Assistance. From funds appropriated in Strategy A.1.5, routine maintenance, General Appropriations Act, the Department of Transportation shall assist cities and counties with the maintenance of city streets and county roads. The department shall:

(1) when requested by any local government, provide engineering/maintenance expertise on roadway maintenance within available department resources.

(2) make maximum usage of surplus materials on hand by making surplus materials available to any local government needing such materials.

(3) develop rules and procedures in order to implement this section and provide for the equitable distribution of these surplus materials and other assistance with a preference given to counties with an above average number of overweight trucks at a total value of assistance of not less than the assistance provided in the 1996-97 biennium.

(4) undertake cooperative and joint procurement of roadway materials with local governments and General Service Commission procedures.

Floor Amendment No. 13

Amend CSSB 370 by adding a new section to the bill, appropriately numbered, to read as follows and renumbering subsequent sections appropriately:

SECTION _____. Subchapter A, Chapter 201, Transportation Code, is amended by adding Section 201.004 to read as follows:

Sec. 201.004. PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE GREATER THAN FIFTY DOLLARS; PENALTY. (a) A person who is a member of the commission or an employee of the department commits an offense if the person accepts a gift, gratuity, or other thing of value greater than fifty dollars, including travel, from a person who:

(1) is employed by or participates in the management of a business entity or other organization that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 20 percent interest in a business entity or other organization that receives funds from the department;

(3) is a person a significant portion of whose business consists of furnishing goods or services to an entity or organization described by Subdivision (1) or (2); or

(4) is an agent, representative, attorney, employee, officer, owner, director, or partner of an entity, organization, or person described by Subdivision (1), (2), or (3).

(b) An offense under Subsection (a) is a Class A misdemeanor.

Floor Amendment No. 14

Amend the Thompson/Davis Amendment to read as follows:

Amend CSSB 370 by adding a new section to the bill, appropriately numbered, to read as follows and renumbering subsequent sections appropriately:

SECTION ____ . Subchapter A, Chapter 201, Transportation Code, is amended by adding Section 201.004 to read as follows:

Sec. 201.004. PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE GREATER THAN FIFTY DOLLARS; PENALTY. (a) A person who is a member of the commission or an employee of the department commits an offense if the person accepts a gift, gratuity, or other thing of value greater than fifty dollars, including travel, from a person who:

(1) is employed by or participates in the management of a business entity or other organization that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that receives funds from the department;

(3) is a person a significant portion of whose business consists of furnishing goods or services to an entity or organization described by Subdivision (1) or (2); or

(4) is an agent, representative, attorney, employee, officer, owner, director, or partner of an entity, organization, or person described by Subdivision (1), (2), or (3).

(b) An offense under Subsection (a) is a Class A misdemeanor.

Floor Amendment No. 15

Amend CSSB 370 in SECTION 1.22 of the bill, proposed Section 223.012, Transportation Code (page 23, lines 22-24, house committee report), by striking Subdivision (2) and substituting the following:

(2) develop and review a contractor bidding system that ensures contractors meet each quality, safety, and timeliness standard established by the commission.

Floor Amendment No. 17

Amend CSSB 370 in SECTION 1.23 of the bill, proposed Section 223.041(d), Transportation Code, (page 25, line 20, house committee report), by striking "may provide" and substituting "shall [~~may~~] provide".

Floor Amendment No. 18

Amend CSSB 370 as follows:

1) On page 31, between lines 17 and 18, insert the following as Section 224.158(c), Transportation Code:

(c) Notwithstanding any other provision of law to the contrary, the department, regional tollway authorities described in Chapter 366; transportation corporations; all transferees of these entities; and all third party service providers under contract with one or more of these entities or a transferee of one or more of these entities, shall consider offering motor vehicle operators the option of using a transponder to pay tolls on a non-stop basis to mitigate congestion at toll collection locations, to enhance traffic flow and to otherwise increase efficiency of operations.

2) On page 58, line 9, insert the following after the end of the sentence as part of Section 361.031(c), Transportation Code: "The authority may enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and services to design, construct, operate, maintain, expand, enlarge, or extend the authority's turnpike projects."

3) On page 73, between lines 4 and 5, insert the following as new SECTION 7.21 of the bill and renumber the subsequent sections appropriately:

SECTION 7.21. Section 361.255, Transportation Code, is amended by adding a Subsection (c) to read as follows:

(c) Notwithstanding any other provision of law to the contrary, the authority, all transferees of the authority, and all third party services providers under contract with the authority or a transferee of the authority, shall consider offering motor vehicle operators the option of using a transponder to pay tolls on a non-stop basis to mitigate congestion at toll collection locations, to enhance traffic flow and to otherwise increase efficiency of operations.

4) On page 116, between lines 7 and 8, insert the following as Section 366.179(c), Transportation Code:

(c) Notwithstanding any other provision of law to the contrary, an authority, all transferees of an authority, and all third party services providers under contract with an authority or a transferee of an authority, shall consider offering motor vehicle operators the option of using a transponder to pay tolls on a non-stop basis to mitigate congestion at toll collection locations, to enhance traffic flow and to otherwise increase efficiency of operations.

Floor Amendment No. 19

Amend CSSB 370, in Article 1 of the bill, Section 1.28, by striking proposed Section 455.0015, Transportation Code, (House Committee printing, page 33, line 27-page 34, line 4), and substituting the following:

Sec. 455.0015. TRANSPORTATION NEEDS OF CLIENTS OF HEALTH AND HUMAN SERVICES AGENCIES. In performing its public transportation planning and funding activities, the department shall:

(1) consider and include the transportation needs of those persons who are clients of the health and human services agencies of this state;

(2) to the extent possible, and to the maximum extent feasible, utilize non-profit entities in addressing those transportation needs; and

(3) to the extent that non-profit entities cannot be utilized to provide those transportation needs, utilize the existing network of transportation providers, particularly the fixed-route components of that network to provide those services.

Floor Amendment No. 20

Amend CSSB 370, in Article 1 of the bill, by striking Section 1.31 and renumbering subsequent sections of Article 1 accordingly.

Floor Amendment No. 23

Amend CSSB 370 in Article 4 of the bill by adding the following appropriately numbered sections to read as follows and by renumbering the remaining sections as appropriate:

SECTION 4.____. Sections 3(a) and (e), Article 6675c, Revised Statutes, are amended to read as follows:

(a) A motor carrier may not operate a commercial motor vehicle, as defined by Section ~~548.001, Transportation Code, [140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);]~~ or a tow truck on a road or highway of this state unless the carrier registers with the department under this article.

(e) The department shall issue a certificate containing a single registration number to a motor carrier, regardless of the number of vehicles requiring registration the carrier operates. The department shall issue a cab card as described by Section 5 of this article for each vehicle requiring registration the motor carrier operates. To avoid multiple registrations of a single motor carrier, the department shall adopt simplified procedures for the registration of motor carriers transporting household goods as agents for carriers required to register under this article.

SECTION 4.____. Sections 4(a), (b), and (d), Article 6675c, Revised Statutes, are amended to read as follows:

(a) A motor carrier that is required to register under Section 3 of this article shall maintain liability insurance in an amount set by the department for each vehicle requiring registration the carrier operates. The department by rule may set the amount of liability insurance required at an amount that does not exceed the amount required for a motor carrier under federal regulations adopted under 49 U.S.C. Section 10927(a)(1). In setting the amount the department shall consider:

- (1) the class and size of the vehicle; and
- (2) the type of persons or cargo being transported.

(b) A motor carrier required to register under Section 3 of this article transporting household goods shall maintain cargo insurance in the same amount required for a motor carrier transporting household goods under federal law.

(d) A motor carrier that is required to register under Section 3 of this article must file with the department proof of insurance in the amounts required by Subsections (a) and (b) of this section, or proof of financial responsibility as described by Subsection (c) of this section, in a form prescribed by the department. The form must be filed:

- (1) at the time of the initial registration;
- (2) at the time of a subsequent registration, if the motor carrier was required to be continuously registered under this article and the carrier failed to maintain continuous registration;
- (3) at the time a motor carrier changes insurers; and
- (4) at the time a motor carrier changes ownership, as determined by rules adopted by the department.

SECTION 4. Section 7(a), Article 6675c, Revised Statutes, is amended to read as follows:

(a) The department may suspend or revoke a registration issued under this article if:

- (1) a motor carrier fails to maintain insurance or proof of financial responsibility as required by Section 4(a) or (b) or Section 8(c)(5) of this article;
- (2) a motor carrier fails to keep proof of insurance in the cab of each vehicle as required by Section 4(e) of this article;
- (3) a motor carrier fails to register a vehicle requiring registration; or
- (4) a motor carrier knowingly provides false information on any form filed with the department under this section.

SECTION 4. Section 8, Article 6675c, Revised Statutes, is amended by amending Subsections (c) and (f) and adding Subsection (g) to read as follows:

(c) The department shall adopt rules to protect consumers who use the services of a motor carrier ~~[who is required to register under Section 3 of this article and]~~ who is transporting household goods for compensation ~~[that are at least as stringent as the corresponding provisions of 49 C.F.R. Part 1056. The department may adopt rules under this subsection that are more stringent than the corresponding federal provisions. A motor carrier transporting household goods shall list a place of business with a street address in this state and the carrier's registration number issued under this article in any print advertising published in this state].~~ The department may adopt all such rules as are necessary to ensure that customers of household goods movers are protected from deceptive or unfair practices and unreasonably hazardous activities on the part of the movers. Such rules shall ~~[may]~~ include but are not limited to measures to:

- (1) establish a formal process for resolving disputes over fees and damages ~~[apart from the method of mediation in Subsection (f) of this section];~~
- (2) require a carrier to indicate clearly to consumers whether estimates are binding or nonbinding and disclose the maximum price a consumer could be required to pay; ~~[and]~~
- (3) create a centralized process for making complaints about a carrier which also allows consumers to inquire about a carrier's complaint record;

(4) require a motor carrier transporting household goods to list a place of business with a street address in this state and the carrier's registration number issued under this article in any print advertising published in this state;

(5) require motor carriers who are required to register under this section to file proof of cargo insurance in amounts to be determined by the department that do not exceed the amount required for a motor carrier transporting household goods under federal law and measures to allow alternative proof of financial responsibility, through surety bonds, letters of credit, or other means satisfactory to the department, for contractual obligations to customers that do not exceed \$5,000 aggregate loss or damage to total cargo shipped at any one time;

(6) require motor carriers who are required to register under this section to conspicuously advise consumers concerning limitation of any carrier liability for loss or damage as determined under Subdivision (7) of this subsection; and

(7) determine reasonable provisions governing limitation of liability for loss or damage of motor carriers required to register under this section, not to exceed 60 cents per pound per article.

(f) The department shall appoint a rules advisory committee consisting of representatives of motor carriers transporting household goods using small, medium, and large equipment, the public, and the department. Members of the committee serve at the pleasure of the department and are not entitled to compensation or reimbursement of expenses for serving on the committee. The department may adopt rules to govern the operations of the advisory committee. The committee shall:

(1) examine the rules adopted by the department under Subsection (c) of this section and make recommendations to the department on modernizing and streamlining the rules;

(2) conduct a study of the feasibility and necessity of requiring any vehicle liability insurance for household goods carriers required to register under this section; and

(3) pursuant to Subsection (c)(7) of this section, recommend a maximum level of liability limitation that does not exceed 60 cents per pound [All collective associations of motor carriers transporting household goods, or agents thereof, which have received approval for collective ratemaking agreements under Section 9(d) of this article shall provide a method of mediation for consumers to receive resolution through mediation of disputes over fees, damages, and services. All costs associated with such mediation shall be borne by the motor carriers, the agents thereof, or the association. All carriers and agents who are parties to collective agreements approved under Section 9(d) of this article must participate in consumer complaint resolution, including participation in the mediation process and advertisement of the availability of mediation in all contracts or estimate proposals. Any complaint mediation that is not resolved to the mutual agreement of all parties shall be reported to the department. Consumers shall be advised of their rights to seek resolution directly from the department. The department shall adopt rules that ensure such notification is available to consumers in a form and manner consistent with its duties under Subsection (c) of this section].

(g) The department shall require motor carriers who are not required to register under Section 3 of this article to register their operations before transporting household goods for compensation. The department shall charge a motor carrier who registers under this subsection a fee that does not exceed the total of the fees imposed by Section 3 of this article.

SECTION 4.____. Section 10, Article 6675c, Revised Statutes, is amended to read as follows:

Sec. 10. CRIMINAL PENALTY. (a) A person commits an offense if the person fails to:

- (1) register as required by Section 3 or 8 of this article;
- (2) maintain insurance or proof of financial responsibility as required by Section 4 or 8 of this article; or
- (3) keep a cab card in the cab of a vehicle as required by Section 5(a) of this article.

(b) A person commits an offense if the person solicits the transportation of household goods for compensation without being registered as required by Section 3 or 8 of this article.

(c) An offense under this section is a Class C misdemeanor.

SECTION 4.____. Section 1(1), Article 6675d, Revised Statutes, is amended to read as follows:

(1) "Commercial motor vehicle" means a motor vehicle described by Section 548.001, Transportation Code [has the meaning assigned by Section 140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)].

SECTION 4.____. Section 5, Article 6675d, Revised Statutes, is amended by adding Subsection (c) to read as follows:

(c) A rule adopted by the director under this article relating to hours of service, an operator's record of duty status, or an operator's daily log, for operations outside a 150-mile radius of the normal work-reporting location, also applies to and must be complied with by a motor carrier, as defined by Section 1, Article 6675c, Revised Statutes, of household goods not using a commercial motor vehicle.

SECTION 4.____. The study required by Section 8(f)(2), Article 6675c, Revised Statutes, as added by this Act, must be completed not later than July 1, 1998, and any resulting rules shall be made to take effect January 1, 1999.

Amendment No. 24

Amend CSSB 370 as follows:

(1) In SECTION 5.01 of the bill by adding Section 1.01. Article 6687-1a, Revised Statutes, Subsection (3) is amended to read as follows:

(3) "Casual Sale" means the sale ~~[at auction]~~ of not more than ~~[one]~~ four nonrepairable motor vehicles, salvage vehicles or late model salvage motor vehicles to the same person during a calendar year.

(2) In SECTION 5.01 of the bill by adding Section 2.01. Article 6678-1a, Revised Statutes, Subsection (g) is amended to read as follows:

(g) Except as otherwise provided by this subsection, this article does not apply to a person who purchases a nonrepairable vehicle or salvage

vehicle from a salvage pool operator or salvage vehicle dealer in a casual sale. The commission shall adopt rules as necessary to regulate casual sales and to enforce the subsection. A salvage vehicle pool operator or salvage vehicle dealer that sells a vehicle in a casual sale shall comply with each rule adopted by the commission regarding that sale.

Floor Amendment No. 25

Amend **CSSB 370** by adding a new section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections appropriately:

SECTION __. Section 201.105, Transportation Code, is amended by adding Subsection (g) to read as follows:

~~(g) The commission may by rule require that:~~

~~(1) any product, or material, that is approved for use in any one district shall be approved for use by any other district.~~

~~(2) any product, service, material, or process that has been disapproved for use in any one district may not be used by any other district.~~

Floor Amendment No. 26

Amend **CSSB 370** by adding a new section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections of the bill accordingly:

SECTION __. Section 9, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by adding Subsection (e) to read as follows:

(e) The holder of a license may not operate a vehicle storage facility that allows a person who owns a vehicle that has been stored at the facility, or who is the representative of the owner of the vehicle, to remove the vehicle from the premises of the facility unless the person furnishes the license holder, or an employee of the license holder, evidence of financial responsibility for the vehicle described by Section 601.053(a), Transportation Code.

Floor Amendment No. 27

Amend **CSSB 370** in SECTION 7.10 of the bill as follows:

(1) In amended Section 361.132(a), Transportation Code (page 63, lines 21-22, House committee report), strike "or convenient".

(2) In proposed Section 361.132(d), Transportation Code (page 64, line 21 and line 24, House committee report), strike "or convenient" both times it appears.

Floor Amendment No. 29

Amend **CSSB 370** in Article 1 of the bill as follows:

(1) In SECTION 7.01 of the bill, proposed Section 222.103(a), Transportation Code (committee report page 55, lines 18-21), strike the second sentence.

(2) In SECTION 7.01 of the bill, proposed Section 222.103, Transportation Code (committee printing, page 55, after line 25), add a new Subsection (c) to read as follows:

(c) The department shall provide each member of the legislature who wants to receive one a status report on all highway construction projects, by legislative district, that are under contract or awaiting funding. The report shall include projects that would be funded in any manner by state, federal, or toll funds. The report shall be provided before January 1 in each fiscal year. In addition, not less than 90 days before a loan is granted by the department for any project, the department shall notify each member of the legislature that represents any part of area affected by the project of the status of the project and how any other project in any other district would be affected.

(d) The department shall ask each legislator whether the legislator wants to receive the report under this section.

Floor Amendment No. 30

Amend CSSB 370 in SECTION 7.25 of the bill, proposed Section 366.003(11)(D), Transportation Code (page 78, line 24, House committee report), by striking "service station, hotel, motel, restaurant,".

Floor Amendment No. 31

Amend CSSB 370 in SECTION 7.23 of the bill, amended Section 361.331(a)(1), Transportation Code (page 74, line 22, House committee report), by inserting between "hearing" and the semicolon "in each affected county".

Floor Amendment No. 32

Amend CSSB 370 as follows:

On page 82, line 20, after the word "compensation" add "and benefits", retaining all other language as presently provided in subsection (8).

Floor Amendment No. 33

Amend CSSB 370 in Section 7.25 of the bill, proposed Section 366.251, Transportation Code (page 119, lines 10-12, House committee report), by striking Subsection (e) and substituting the following:

(e) All appointments to the board shall be made without regard to disability, sex, religion, age, or national origin. In making appointments under this subsection, the governor or a commissioners court shall attempt to create a board that is representative of the diversity of the authority.

Floor Amendment No. 34

Amend CSSB 370 in SECTION 7.27 of the bill by adding a new Subsection (g) to read as follows:

(g) The North Texas Tollway Authority shall, within a reasonable period of time after the effective date of this Act, include and adequately fund a feasibility study for the construction of the Trinity Parkway in the southern part of Dallas County.

Floor Amendment No. 35

Amend CSSB 370 as follows:

On page 122, lines 5 and 6, place a period after the word "year," and delete the remaining text that reads "unless the absence is excused by majority vote of the board."

Floor Amendment No. 37

Amend CSSB 370 by adding a new section to Article 7 of the bill, appropriately numbered, to read as follows and renumbering subsequent sections of the bill appropriately:

SECTION 7.____. (a) If the Texas Department of Transportation is authorized to construct an intermodal toll road inclusive of a freight rail line that is to be part of the state highway system:

(1) in selecting the route for the intermodal toll road, the department must give consideration for the character of the land along the proposed route of the toll road and its suitability for particular uses; and

(2) if the route is to be selected from among more than one alternative route, the department must give consideration for the character of the land along each alternative route and its suitability for particular uses.

Floor Amendment No. 39

Amend CSSB 370 in SECTION 1.23 of the bill, proposed Section 223.041(c), Transportation Code, (page 25, line 19, House committee report), by adding the following at the end of the subsection:

The department shall attempt to make at least 20 percent of the expenditures for engineering-related services with private sector providers under this subsection with historically underutilized businesses, as defined by Section 2161.001, Government Code.

Floor Amendment No. 41

Amend CSSB 370 in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the existing sections as appropriate:

SECTION 1.____. (a) Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0195 to read as follows:

Sec. 21.0195. DISMISSAL OF CERTAIN CONDEMNATION PROCEEDINGS: TEXAS DEPARTMENT OF TRANSPORTATION. (a) This section applies only to the dismissal of a condemnation proceeding that involves the Texas Department of Transportation.

(b) The department may move to dismiss a proceeding it files, and the court shall conduct a hearing on the motion. The court may grant the motion only if the court determines that the property owner's interest will not be materially affected by the dismissal. The department may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner solely to obtain a lower condemnation award.

(c) If a court dismisses a condemnation proceeding, the court shall make an allowance to the property owner for the value of the department's use of the property while in possession of the property, any damage that the condemnation has caused to the property owner, and any expenses the property owner has incurred in connection with the condemnation, including reasonable and necessary fees for attorneys.

(b) The changes in law made by this section apply only to dismissal of a condemnation proceeding for which a motion is made on or after the effective date of this section. Dismissal of a condemnation proceeding for which a motion is made before the effective date of this section is governed by the law in effect at the time the motion was made, and that law is continued in effect for that purpose.

Floor Amendment No. 42

Amend CSSB 370, in Article 2 of the bill, by adding the following section, appropriately numbered, and renumbering subsequent sections accordingly:

SECTION 2. __. Subchapter B, Chapter 391, Transportation Code, is amended by adding Section 391.0315 to read as follows:

Sec. 391.0315. REGULATION OF CERTAIN OUTDOOR ADVERTISING OF SEXUALLY ORIENTED BUSINESSES. (a) In this section, "sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

(b) This section applies only to outdoor advertising that is located within five miles of the border between this state and another state, is erected for the purpose of having its message seen from the main-traveled way of a highway in the interstate system, and is designed, intended, or used to advertise a sexually oriented business, including outdoor advertising that is located on the premises of a multitenant commercial center in which a person is doing business and that displays the name or any portion of the name of the business, a name under which the business was formerly operated on those premises, or a name containing any reference to a sexually oriented business or terminology generally related to the sexually oriented business.

(c) To the extent of a conflict between this section and another provision of this chapter, this section prevails.

(d) A person commits an offense if:

(1) the person knowingly erects or maintains within 660 feet of the nearest edge of a right-of-way of a highway in the interstate system outdoor advertising designed, intended, or used to advertise a sexually oriented business; and

(2) the outdoor advertising is not in compliance with this section.

(e) A person may erect or maintain not more than two units of outdoor advertising for a particular sexually oriented business. The person who owns or operates the sexually oriented business shall designate one unit as the primary unit of outdoor advertising and one unit as the secondary unit of outdoor advertising.

(f) A primary unit of outdoor advertising:

- (1) must be a square or rectangular flat plane;
 - (2) may:
 - (A) have no more than two display surfaces; and
 - (B) contain only the name of the sexually oriented business; and
 - (3) may not:
 - (A) contain any flashing lights, photographs, silhouettes, drawings, or pictorial representations;
 - (B) exceed four feet in height or eight feet in width; or
 - (C) exceed 32 square feet in area.
- (g) A secondary unit of outdoor advertising:
 - (1) must be a square or rectangular flat plane;
 - (2) may:
 - (A) have only one display surface; and
 - (B) be affixed or attached only to the sexually oriented business that is the subject of the advertising; and
 - (3) may not exceed:
 - (A) four feet in height or five feet in width; or
 - (B) 20 square feet in area.
- (h) For a unit of outdoor advertising that is not in compliance with this section and that was erected before September 1, 1997, the department may:
 - (1) permit the outdoor advertising to be maintained where erected under an amortization plan covering the lesser of two years or the useful life of the unit; or
 - (2) require the immediate removal of the outdoor advertising.
- (i) If the department requires the removal of off-premise outdoor advertising, the compensable cost shall be computed in the manner prescribed by Section 216.008, Local Government Code, except that the base date is September 1, 1997. If the department requires the removal of on-premise outdoor advertising, the compensable value of the outdoor advertising shall be computed in the manner prescribed by Section 216.009, Local Government Code. In this subsection, "off-premise outdoor advertising" and "on-premise outdoor advertising" have the meanings assigned the terms "off-premise sign" and "on-premise sign," respectively, by Section 216.002, Local Government Code.
- (j) An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Each day an offense continues is a separate offense.
- (k) To the extent of a conflict between this section and a municipal ordinance, the ordinance prevails.

Floor Amendment No. 43

Amend CSSB 370 by striking the first sentence of SECTION 8.02(b), (page 133, lines 16-18, House committee report), and substituting the following:

The comptroller shall conduct an audit of the records of the North Texas Turnpike Authority. The comptroller may contract with a private entity to perform the audit required by this section.

Amendment No. 44

Amend CSSB 370 as follows:

In Section 8.02 of the bill add the following Subsection (c):

"(c) No later than October 1, 1997, as additional consideration for the transfer of the properties described in Subsection (b) of Section 8.01 of this Act, the North Texas Tollway Authority shall distribute the proceeds (assets less deferred study costs) from the Texas Turnpike Authority feasibility study fund that were assigned by the North Texas Tollway Authority on the effective date of this Act as follows:

(1) all proceeds necessary to pay contract commitments for feasibility studies for Laredo Bridge Number IV, Anzalduas Bridge, Port of Brownsville Bridge, U.S. 183A, S.H. 45/Loop 1, and S.H. 130, such amount not to be less than \$1,845,000, shall be distributed to the Texas Department of Transportation for deposit in the state highway fund;

(2) remaining proceeds necessary to pay contract commitments for feasibility studies, other than those studies listed in Subdivision (1) of this subsection, under contract as of the Texas Turnpike Authority's January 31, 1997 financial statements shall be distributed to the North Texas Tollway Authority; and

(3) any remaining proceeds shall be distributed to the Texas Department of Transportation for deposit in the state highway fund."

Floor Amendment No. 45

Amend CSSB 370 in Article 1 of the bill by adding a appropriately numbered section to read as follows and by renumbering the existing sections as appropriate:

SECTION 1. Subtitle A, Title 4, Transportation Code, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. PORT AUTHORITY ADVISORY COMMITTEE

Sec. 53.001. PORT AUTHORITY ADVISORY COMMITTEE. (a) The port authority advisory committee consists of five members appointed by the Texas Transportation Commission to advise the commission and the Texas Department of Transportation on matters relating to port authorities, including:

(1) intermodal and multimodal transportation issues relating to Texas waterways and ports and port improvements; and

(2) the identification and development of funding mechanisms, including the state infrastructure bank, for addressing the issues described by Subdivision (1).

(b) The members shall be appointed as follows:

(1) one member who represents the Port of Houston Authority of Harris County, Texas;

(2) two members who represent ports other than Houston on the upper Texas coast; and

(3) two members who represent ports on the lower Texas coast.

(c) A committee member serves at the pleasure of the commission.

(d) A committee member may not receive compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred in performing the member's duties.

(e) The commission may adopt rules to govern the operations of the committee.

Floor Amendment No. 46

Amend CSSB 370 as follows:

(1) In SECTION 7.01 of the bill, in proposed Section 222.102, Transportation Code (committee printing page 55, lines 12-13), by striking "if the commission determines the segment is subject to heavy passenger and commercial traffic" and substituting "after notice and a public hearing"

(2) In SECTION 7.04 of the bill, in proposed Section 361.031, Transportation Code (committee printing page 57, line 19), by striking "Chapter 362, and Subchapter E, Chapter 222, and substituting 'and Chapter 362'"

Amendment No. 47

Amend CSSB 370 as follows:

(1) In SECTION 7.04, Sec. 361.031, add the following new Subsection (g):

(g) The commissioner shall employ a director of the authority who shall serve as the authority's chief administrative officer. The director shall serve at the pleasure of the commission.

(2) In SECTION 7.08, Sec. 361.042, Subsection (a), strike Subdivision (3) and renumber Subdivision (4) as Subdivision (3).

Floor Amendment No. 48

Amend CSSB 370 as follows:

(1) Strike SECTION 7.12 of the bill and renumber the remaining sections as appropriate.

(2) In SECTION 7.25 of the bill, proposed Section 366.168 (page 103, after line 27, House committee report) add a new Subsection (c) to read as follows:

(c) The authority shall provide and maintain without charge a passageway over or under the turnpike project for the owner of the severed real property and the owner's employees and representatives. The authority is not required to furnish a passageway if the owner waives the requirement or the original tract involved is less than 80 acres.

Floor Amendment No. 49

Amend CSSB 370 in SECTION 7.25 of the bill, proposed Section 366.172(a), Transportation Code (page 108, after line 12, House committee report), by inserting the following between "Chapter 431" and the period:

only with the approval of the governing body of the entity to which the project is transferred

Floor Amendment No. 50

Amend CSSB 370, in Article 8, of the bill, by adding a new section, to read as follows, and renumbering subsequent sections in Article 8 accordingly:

SECTION 8.____. (a) The Texas Department of Transportation shall remit to the Comptroller of Public Accounts all money and other funds received by the department as a result of the abolition of the Texas Turnpike Authority and the creation of Texas Turnpike Authority division of the department, including all funds payable under Section 8.02 of this article and any money received for a feasibility study under Subchapter E, Chapter 361, Transportation Code.

(b) The comptroller shall deposit money received from the department under this section to the credit of a special account in the General Revenue Fund.

(c) Subsection (a) does not apply to money or other funds transferred to the North Texas Tollway Authority.

Floor Amendment No. 51

Amend CSSB 370, in Article 1 of the bill, by adding the following section, appropriately numbered, and renumbering subsequent sections in Article 1 of the bill accordingly:

SECTION 1.____. Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.2703 to read as follows:

Sec. 502.2703. PROFESSIONAL SPORTS TEAM LICENSE PLATES.

(a) The department shall issue for passenger cars and light trucks specially designed license plates that include the name and insignia of a professional sports team located in this state.

(b) The department may not issue a license plate under this section for a particular professional sports team unless that team:

(1) certifies to the department that it has determined that at least 1,500 persons will apply for the plates; and

(2) plays its home games in a facility constructed or operated, in whole or in part, with public funds.

(c) Except as provided by Subsection (b), the department shall issue license plates under this section to a person who:

(1) applies to the county assessor-collector of the county in which the person resides on a form provided by the department; and

(2) pays an annual fee of \$35, in addition to the fee prescribed by Section 502.161 and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(d) Of each fee collected under this section, the department shall:

(1) send \$25 to the public entity that provided public funds for the construction or renovation of the facility in which the professional sports team plays its home games or that provides public funds for the operation of that facility; and

(2) deposit \$10 to the credit of the state highway fund.

(e) Funds distributed under Subsection (d)(1) may be spent for maintenance or improvement of the facility, or for payments toward the retirement of bonds used for construction of the facility.

(f) If the owner of a vehicle registered under this section disposes of the vehicle during the registration year, the owner shall return the special license plates to the department.

(g) In this section:

(1) "Public entity" includes a municipality, county, industrial development corporation, or special district that is authorized to plan, acquire, establish, develop, construct, or renovate a facility in which a professional sports team plays its home games.

(2) "Professional sports team" means a sports team that is a member or an affiliate of a member of the National Football League, National Basketball Association, or National Hockey League or a major league baseball team.

Floor Amendment No. 53

Amend CSSB 370, in Article 1 of the bill, by adding the following section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections of Article 1 accordingly:

SECTION 1__ (a) The Texas Department of Transportation is prohibited from selling motor vehicle certificate of title information or motor vehicle registration personal information that consists of the name, address, or date of birth of an individual unless the purchaser of the information agrees in writing with the department that the purchaser will not disseminate or publish the information on the internet, or permit another to disseminate or publish the information on the internet.

(b) As soon as practicable, the Texas Department of Transportation shall adopt emergency rules to implement this section.

Amendment No. 1 on Third Reading

Amend CSSB 370 on third reading by amending the Gray second reading Floor Amendment No. 50 to CSSB 370 as follows:

At the end of the Subsection (b) add the following:

"Notwithstanding any other law, the money deposited in the account may be used only for the purposes of the department. HB 2948, 75th Legislature, Regular Session, 1997, and Section 403.095, Government Code, do not apply to money deposited in the account."

Floor Amendment No. 2 on Third Reading

Amend CSSB 370, on third reading, in Article 1 of the bill, by adding a new section to Article 1, to read as follows, and renumbering subsequent sections of Article 1 accordingly:

SECTION 1__ Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.610 to read as follows:

Sec. 201.610. NOTICE OF REPORT OR STUDY TO LEGISLATORS. (a) Not later than the 10th day after the date on which the department releases a report or the results of a study, the department shall provide notice of the study or report to each member of the legislature who represents a county that is covered by the study or report or that may be effected by the study or report.

(b) On request of a member of the legislature, the department shall provide the member with a copy of the study or report.

Floor Amendment No. 3 on Third Reading

Amend CSSB 370, on third reading, in Section 1. __ of the bill, proposed Section 502.2703, Transportation Code, by striking proposed Subsection (e) and substituting the following:

(e) Funds distributed to a public entity under Subsection (d)(1) shall be deposited to the credit of the venue project fund, if the public entity has created a venue project fund under Section 334.042 or 335.072, Local Government Code. If the public entity has not created a venue project fund, funds distributed to a public entity under Subsection (d)(1) must first be used to retire any public debt incurred by the public entity in the construction or acquisition of the facility in which the professional sports team plays its home games. After that debt is retired, funds distributed to the public entity may be spent only for maintenance or improvement of the facility.

Amendment No. 4 on Third Reading

Amend CSSB 370 on third reading by adding a new Section __ and renumbering subsequent Sections thereof.

SECTION __. REST AREA FACILITIES. The Department shall conduct a feasibility study to determine the need for construction of additional public rest areas with restrooms along that section of Interstate 35 between San Antonio and Laredo and report its findings to the legislature no later than January 1, 1999.

Amendment No. 5 on Third Reading

Amend the Clark amendment to CSSB 370 on third reading as follows:
Add the following Subsection (1) to Sec. 391.0315:

(1) This section takes effect on the first day of the calendar month following the date the Texas Transportation Commission determines that the implementation of this section will neither result in the loss of highway-related funds from the federal government nor violate the first amendment of the U.S. Constitution. The commission shall endeavor to make a determination under this subsection as soon as practical after this section becomes law. In making a determination under this subsection, the commission may seek the opinion of an officer or employee of the federal government, the attorney general of this state, or any other appropriate person.

Amendment No. 6 on Third Reading

Amend CSSB 370 on third reading by amending the McClendon second reading Floor Amendment No. 53 to CSSB 370 as follows:

(1) In lines 5 to 12, strike subsection (a) and substitute the following new subsection (a):

"(a) Notwithstanding any other law including Government Code, Chapter 552, the Texas Department of Transportation is prohibited from providing motor vehicle certificate of title information or motor vehicle registration personal information that consists of the name, address, or date of

birth of an individual unless the person receiving the information agrees in writing with the department that the person will not disseminate or publish the information on the internet or similar computer cyberspace network or bulletin board, or permit another to disseminate or publish the information in that manner.

(2) Add the following new Subsections (b) and (c) and re-letter existing Subsection (b) as Subsection (d):

"(b) A person having access to or in possession of the information provided under this section shall not disseminate or publish this information on the internet or similar computer cyberspace network or bulletin board. A person commits an offense if the person disseminates or distributes information in violation of this section.

(c) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than six months; or
- (3) both the fine and confinement."

Floor Amendment No. 7 on Third Reading

Amend CSSB 370, on third reading, by adding a new section to Article 7 of the bill, appropriately numbered, to read as follows and renumbering subsequent sections of the bill appropriately:

SECTION 7. (a) If the Texas Department of Transportation is authorized to construct an intermodal toll road inclusive of a freight rail line that is to be part of the state highway system, and if the toll road is constructed as a result of a trade agreement between the United States and foreign countries to relieve congestion on U.S. Interstate Highway 35, no portion of the toll road may be constructed within one mile of an existing public elementary or secondary school in this state that is within 250 miles of an international border crossing.

(b) Subsection (a) of this section takes effect on the first day of the calendar month following the date on which the Texas Transportation Commission determines that implementation of Subsection (a) will not result in the loss of highway-related funds from the federal government. The commission shall endeavor to make such determinations as soon as practicable.

The amendments were read.

Senator Armbrister moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on SB 370 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Sibley, Cain, Ogden, and Shapiro.

HOUSE BILL 864 ON SECOND READING

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 864, Relating to coverage under group health benefit plans for certain students.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 864 ON THIRD READING

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 864** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 864 was read third time and was passed by a viva voce vote.

HOUSE BILL 1928 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1928, Relating to the operation of juvenile pre-adjudication and post-adjudication secure detention and correctional facilities.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1928 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1928** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 1928 was read third time and was passed by a viva voce vote.

HOUSE BILL 2065 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2065, Relating to the statistical recording of juvenile cases initially referred to the office of the prosecuting attorney.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2065** as follows:

On page 1, line 18, strike the word "promptly" and substitute in lieu thereof "within three business days".

The amendment was read and was adopted by a viva voce vote.

HB 2065 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2065 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2065** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 2065 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
HOUSE BILL 2592 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2592, Relating to disposition of stolen property.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2592 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2592** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

CSHB 2592 was read third time and was passed by a viva voce vote.

SENATE BILL 681 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 681** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Brown in Chair, laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 681** as follows:

On page 1, line 7, between "except" and "a" insert "a motor bus used to transport pre-primary, primary or secondary students to or from school or for approved extracurricular activities or"

Floor Amendment No. 2

Amend **SB 681** on page 1, line 22, by deleting "except urban buses".

Amend **SB 681** on page 2, lines 5 through 7, by deleting subdivision (10).

Amendment No. 3

Amend **SB 681** as follows:

On page 2, between lines 4 and 5, add a new subsection to read as follows:

"(D) a law enforcement or emergency vehicle.

Floor Amendment No. 4

Amend **SB 681** on page 2, line 10, by deleting "(a)".

Amend **SB 681** on page 2, line 20, by deleting subsection (b).

The amendments were read.

On motion of Senator Armbrister, the Senate concurred in the House amendments to **SB 681** by a viva voce vote.

HOUSE BILL 3189 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3189, Relating to the authority of the Parks and Wildlife Department to issue revenue bonds.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3189 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3189** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 3189 was read third time and was passed by a viva voce vote.

HOUSE BILL 3207 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3207, Relating to the regulation of political contributions and expenditures and political advertising, the registration of lobbyists, personal financial disclosure by certain holders of and candidates for public office, restrictions on certain representation before a state agency by a member of the legislature, and the publication of summaries of opinions of the Texas Ethics Commission; providing a civil penalty.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 3207** as follows:

(1) In SECTION 14 of the bill, strike Subdivision (2), Section 159.002, Local Government Code (House engrossment page 11, lines 19-22), and substitute the following:

"(2) 'County or district officer' means a county judge, county commissioner, county attorney, district attorney, or criminal district attorney."

(2) Strike SECTION 17 of the bill (House engrossment page 23, lines 5 and 6), and renumber subsequent sections of the bill appropriately.

(3) In SECTION 18 of the bill (House engrossment page 23, line 7), strike "(a)".

(4) In SECTION 18 of the bill (House engrossment page 23, lines 15-20), strike all of Subsection (b).

The committee amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 3207** by adding a new SECTION of the bill, appropriately numbered, to read as follows and renumbering subsequent sections of the bill appropriately:

SECTION ____ . Section 171.004, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) A local public official is not required to file an affidavit under this section if the official has filed a financial statement under Chapter 159, but the official shall refrain from participation in the matter as provided by this section.

The committee amendment was read.

On motion of Senator Armbrister, Committee Amendment No. 2 was tabled by a viva voce vote.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 3

Amend **HB 3207** by inserting the following new section, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION ____ . Section 254.040, Election Code, is amended to read as follows:

Sec. 254.040. PRESERVATION OF REPORTS; RECORD OF INSPECTION. (a) Each report filed under this chapter shall be preserved by the authority with whom it is filed for at least two years after the date it is filed.

(b) Each time a person requests to inspect a report, the commission shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The commission shall retain that statement in the file for one year after the date the requested report is filed. This subsection does not apply to a request to inspect a report by:

(1) a member or employee of the commission acting on official business; or

(2) an individual acting on the individual's own behalf.

The committee amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3207** by adding a section to the bill, to be numbered appropriately, to read as follows and by renumbering subsequent sections of the bill appropriately:

SECTION ____ Section 253.001, Election Code, is amended to read as follows:

Sec. 253.001. CONTRIBUTION OR ~~[AND]~~ EXPENDITURE IN ANOTHER'S NAME PROHIBITED. (a) A person may not knowingly make or authorize a political contribution ~~[or political expenditure]~~ in the name of or on behalf of another unless the person discloses in writing to the recipient the [other's] name and address of the person actually making the contribution in order for the recipient to make the proper disclosure ~~[to be made]~~.

(b) A person may not knowingly make or authorize a political expenditure in the name of or on behalf of another unless the person discloses in writing to the person on whose behalf the expenditure is made the name and address of the person actually making the expenditure in order for the person on whose behalf the expenditure is made to make the proper disclosure.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 3207** by adding the following appropriately numbered sections and renumbering the existing sections of the bill accordingly:

SECTION ____ Section 572.002(4), Government Code, is amended to read as follows:

(4) "Elected officer" means:

(A) a member of the legislature;

(B) an executive or judicial officer elected in a statewide election;

(C) a judge of a court of appeals or of a district court;

(D) a member of the State Board of Education; ~~[or]~~

(E) a district attorney or criminal district attorney; or

(F) an individual appointed to fill a vacancy in an office or appointed to a newly created office who, if elected to the office instead of appointed, would be an elected officer under this subdivision.

SECTION ____ The heading to Chapter 159, Local Government Code, is amended to read as follows:

CHAPTER 159. FINANCIAL DISCLOSURE BY COUNTY
[OR DISTRICT] OFFICERS AND [COUNTY] EMPLOYEES

SECTION ____ The heading to Subchapter A, Chapter 159, Local Government Code, is amended to read as follows:

SUBCHAPTER A. FINANCIAL DISCLOSURE BY
CERTAIN COUNTY [OR DISTRICT] OFFICERS

SECTION ____ Section 159.002(2), Local Government Code, is amended to read as follows:

(2) "County [or district] officer" means a county judge, county commissioner, or county attorney[, ~~district attorney, or criminal district attorney~~].

SECTION ____ Section 159.004(a), Local Government Code, is amended to read as follows:

(a) A county [or district] officer or a candidate for [a] county [or district] office shall file a financial statement as required by this subchapter.

SECTION ____ Section 159.005(a), Local Government Code, is amended to read as follows:

(a) The financial statement must include an account of the financial activity of the county [or district] officer or candidate for [a] county [or district] office and an account of the financial activity of the person's spouse and dependent children if the person had actual control over that activity for the preceding calendar year.

SECTION ____ Section 159.008, Local Government Code, is amended to read as follows:

Sec. 159.008. FILING DATES FOR OFFICERS. (a) Not later than the last Friday in April of each year, a county [or district] officer shall file the financial statement required by this subchapter.

(b) A person who is appointed to a county [or district] office or to fill a vacancy in a county [or district] office shall file the first financial statement not later than the 30th day after the date of appointment.

(c) A county [or district] officer may request the county auditor to grant an extension of time of not more than 60 days for filing the statement. The county auditor shall grant the request if it is received before the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. The county auditor may not grant more than one extension to a person in one year except for good cause shown.

SECTION ____ Sections 159.009(a) and (c), Local Government Code, are amended to read as follows:

(a) Not later than the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, a person who is a candidate for [a] county [or district] office, whether partisan or independent, shall file the financial statement required by this subchapter.

(c) A person nominated as a replacement candidate to fill a vacancy in a party nomination for [a] county [~~or district~~] office shall file the financial statement not later than the 15th day after the date the certificate of the replacement nomination is filed.

SECTION ____ Sections 159.014(a) and (c), Local Government Code, are amended to read as follows:

(a) A county [~~or district~~] officer or a candidate for county office commits an offense if the person [~~officer~~] knowingly fails to file a financial statement as required by this subchapter.

(c) It is a defense to prosecution under this section that the person [~~officer~~] did not receive copies of the financial statement form required to be mailed to the person [~~officer~~] by this subchapter.

SECTION ____ This Act takes effect September 1, 1997.

SECTION ____ (a) A district attorney or criminal district attorney shall file a personal financial statement for 1997 with the Texas Ethics Commission under Chapter 572, Government Code, as if subject to that chapter for the entire year. A district attorney or criminal district attorney who was subject to Subchapter A, Chapter 159, Local Government Code, as that subchapter existed before amendment by this Act, is not required to file a personal financial statement for 1997 under that subchapter.

(b) The change in law made to Section 159.014, Local Government Code, by this Act applies only to an offense committed on or after September 1, 1997. For the purposes of this section, an offense is committed before September 1, 1997, if any element of the offense occurs before the effective date.

(c) An offense committed before September 1, 1997, is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

The amendment was read.

On motion of Senator Armbrister and by unanimous consent, further consideration of **HB 3207** was postponed to a time certain of 11:00 a.m. today.

Question—Shall Floor Amendment No. 2 to **HB 3207** be adopted?

HOUSE BILL 1811 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1811, Relating to the Texas State Library and Archives Commission and the creation of the Texas Historical Records Advisory Board.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1811 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1811** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 1811 was read third time and was passed by a viva voce vote.

HOUSE BILL 1812 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1812, Relating to the Texas State Library and Archives Commission and the preservation, management, and disposition of state records and other historical resources.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1812 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1812** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 1812 was read third time and was passed by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2017

Senator Shapleigh called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2017** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2017** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapleigh, Chair; Zaffirini, Moncrief, West, and Nelson.

HOUSE JOINT RESOLUTION 104 ON SECOND READING

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HJR 104, Proposing a constitutional amendment relating to eliminating duplicate numbering in and certain obsolete provisions of the Texas Constitution.

The resolution was read second time and was passed to third reading by a viva voce vote.

HOUSE JOINT RESOLUTION 104 ON THIRD READING

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 104** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HJR 104 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

CONFERENCE COMMITTEE ON HOUSE BILL 2777

Senator Ratliff called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2777** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2777** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chair; Zaffirini, Nelson, Moncrief, and Wentworth.

HOUSE BILL 1301 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1301, Relating to the oversight of the private sector prison industries program.

The bill was read second time.

Senator Whitmire offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1301** as follows:

On page 3, line 21 after "director;" add a new (4) as follows:

"(4) The executive director of the Texas Youth Commission or the designee of the executive director."

Renumber subsequent sections accordingly.

The committee amendment was read.

On motion of Senator Whitmire, Committee Amendment No. 1 was tabled by a viva voce vote.

Senator Whitmire offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend the engrossed version of **HB 1301** as follows:

Delete SECTION 2 of the bill in its entirety.

The committee amendment was read and was adopted by a viva voce vote.

(Senator Shapiro in Chair)

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1301** in SECTION 1 of the bill, in added Section 497.052(b), Government Code, (Senate committee printing, page 2, lines 26-29), by striking Subdivisions (3) and (4) and substituting the following:

"(3) the executive director of the Texas Department of Criminal Justice or the designee of the executive director;

(4) the executive director of the Texas Workforce Commission or the designee of the executive director; and

(5) the executive director of the Texas Youth Commission or the designee of the executive director."

The amendment was read and was adopted by a viva voce vote.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 1301** in SECTION 1 of the bill, in amended Section 497.062, Government Code, (Senate committee printing, page 3, line 40), by striking "3,000 inmates" and substituting "1,500 inmates".

The amendment was read and was adopted by a viva voce vote.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 1301** as follows:

(1) In SECTION 1 of the bill, in added Section 497.052(a)(1), Government Code (Senate committee printing, page 2, line 2), strike "labor" and substitute "organized labor".

(2) In SECTION 1 of the bill, in added Section 497.052, Government Code (Senate committee printing, page 2, lines 15-19), strike Subsection (b).

(3) In SECTION 1 of the bill, in added Section 497.052, Government Code (Senate committee printing, page 2, line 20), strike "(c)" and substitute "(b)".

(4) In SECTION 3(a) of the bill (Senate committee printing, page 3, lines 56-59), strike the sentence beginning with "On or before November 1,".

The amendment was read and was adopted by a viva voce vote.

HB 1301 as amended was passed to third reading by a viva voce vote.

(Senator Sibley in Chair)

HOUSE BILL 1301 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1301** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 1301 was read third time and was passed by a viva voce vote.

HOUSE BILL 2324 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2324, Relating to the organization and operation of certain prison industries in the Texas Department of Criminal Justice, the Texas Youth Commission, and certain county correctional facilities and to agricultural programs and work programs of the Texas Department of Criminal Justice; providing a penalty.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2324**, in SECTION 1 of the bill, in proposed Section 497.025(c), Government Code, (Senate committee report, page 4, line 41, through page 4, line 50), by striking the last two sentences and substituting the following:

"Nothing herein shall be interpreted to require a political subdivision to purchase goods or articles from the office ~~[division]~~ if the political subdivision determines that the goods or articles can be purchased elsewhere at a lower price. An ~~or an~~ agency may decline to purchase goods or articles from the office ~~[division]~~ if the agency determines, after giving the office a final opportunity to negotiate on price, and the General Services Commission certifies, that the goods or articles can be purchased elsewhere at a lower price."

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 2324** by inserting the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION ____ . Section 61.123, Human Resources Code, is amended to read as follows:

Sec. 61.123. PAY AND DISTRIBUTION OF PAY. The commission shall apportion wages earned by a child working under the industries program in amounts determined at the discretion of the commission, in the following priority:

- (1) a person to whom the child has been ordered by a court or to whom the child has agreed to pay restitution;
- (2) a person to whom the child has been ordered by a court to pay child support; ~~[and]~~
- (3) ~~the compensation to victims of crime fund or the compensation to victims of crime auxiliary fund; and~~
- (4) the child's student account.

The amendment was read and was adopted by a viva voce vote.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 2324** as follows:

(1) In SECTION 1 of the bill, in amended Section 497.006, Government Code, strike the first sentence in the section and substitute the following: "To encourage the development and expansion of ~~[the]~~ prison industries ~~[program]~~, the prison industries office may enter into necessary contracts related to the prison industries program."

(2) Strike SECTION 2 of the bill and renumber existing SECTIONS accordingly.

The amendment was read and was adopted by a viva voce vote.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 4

Amend **HB 2324** in SECTION 1 of the bill, in amended Section 497.006, Government Code, (Senate committee printing, page 2, line 55), immediately after "section.", by adding the following: "Not more than 250 inmates may participate in work programs under contracts entered into under this section.".

The amendment was read and was adopted by a viva voce vote.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 5

Amend **HB 2324** as follows:

On page 7 of the committee printing between lines 1 and 2 insert the following and renumber the subsequent sections appropriately:

"SECTION 6. Chapter 63, Civil Practice and Remedies Code, is amended by adding Section 63.006 to read as follows:

Sec. 63.006. GARNISHMENT OF FUNDS HELD IN INMATE TRUST FUND. (a) A writ of garnishment may be issued against an inmate trust fund

held under the authority of the Texas Department of Criminal Justice under Section 501.014, Government Code, to encumber money that is held for the benefit of an inmate in the fund.

(b) The state's sovereign immunity to suit is waived only to the extent necessary to authorize a garnishment action in accordance with this section.

SECTION 7. Sections 501.014(e) and (f), Government Code, are amended to read as follows:

(e) On notification by a court, the department ~~[institutional division]~~ shall withdraw from an inmate's trust fund account any amount the inmate is ordered to pay by order of the court under this subsection ~~[for child support, restitution, fines, and court costs]~~. The department ~~[institutional division]~~ shall make a payment under this subsection as ordered by the court to either the court or the party specified in the court order. The ~~[institutional division and the]~~ department is ~~[are]~~ not liable for withdrawing or failing to withdraw money or making payments or failing to make payments under this subsection. The department ~~[institutional division]~~ shall make withdrawals and payments from an inmate's trust fund account under this subsection according to the following schedule of priorities:

- (1) as payment in full for all orders for child support;
- (2) as payment in full for all orders for restitution;
- (3) as payment in full for all orders for court fees and costs ~~[fines]; [and]~~
- (4) as payment in full for all orders for fines; and
- (5) as payment in full for any other court order, judgment, or writ ~~[court costs]~~.

(f) The department ~~[institutional division]~~ may place a hold on funds in or withdraw funds from an inmate trust fund account:

- (1) to restore amounts withdrawn by the inmate against uncollected funds;
- (2) to correct accounting errors;
- (3) to make restitution for wrongful withdrawals made by an inmate from the trust fund of another inmate;
- (4) to cover deposits until cleared;
- (5) as directed by court order in accordance with Subsection (e); [or]
- (6) as part of an investigation by the department of inmate conduct involving the use of trust funds or an investigation in which activity in the trust fund is evidence; or
- (7) to transfer funds deposited in violation of law or department policy.

SECTION 8. The changes in law made by this Act to Section 63.006, Civil Practice and Remedies Code, apply only to a writ of garnishment issued against an inmate trust fund on or after the effective date of this Act. A writ of garnishment issued against an inmate trust fund before the effective date of this Act is governed by the law as it existed before the effective date of this Act, and that law is continued in effect for this purpose."

The amendment was read and was adopted by a viva voce vote.

HB 2324 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2324 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2324** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 2324 was read third time and was passed by a viva voce vote.

HOUSE BILL 2283 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2283, Relating to the creation of an offense prohibiting sexual activity between certain public servants and persons in custody.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2283 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2283** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 2283 was read third time and was passed by a viva voce vote.

HOUSE BILL 921 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 921, Relating to the statute of limitations for certain sexual offenses committed against children.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 921 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 921** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 921 was read third time and was passed by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 39**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 23, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 39** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI	McCALL
SHAPIRO	VAN DE PUTTE
SIBLEY	GRAY
MONCRIEF	JANEK
SHAPLEIGH	ROMAN
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 3207 ON SECOND READING

The Presiding Officer laid before the Senate **HB 3207** on its second reading and passage to third reading. The bill was read second time, Floor Amendment No. 2 was offered, and further consideration was postponed to a time certain of 11:00 a.m. today.

HB 3207, Relating to the regulation of political contributions and expenditures and political advertising, the registration of lobbyists, personal financial disclosure by certain holders of and candidates for public office, restrictions on certain representation before a state agency by a member of the legislature, and the publication of summaries of opinions of the Texas Ethics Commission; providing a civil penalty.

Question—Shall Floor Amendment No. 2 to **HB 3207** be adopted?

On motion of Senator Ellis and by unanimous consent, Floor Amendment No. 2 was withdrawn.

Floor Amendment No. 3 was not offered.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 4

(1) Amend **HB 3207** in SECTION 14 of the bill by striking Section 159.001, Local Government Code, and substituting the following:

Sec. 159.001. APPLICABILITY OF [COUNTY COVERED BY] SUBCHAPTER. This subchapter applies only to:

(1) a county judge or county commissioner in a county with a population of 500,000 or more; or

(2) a county attorney, in a county with a population of 50,000 or more.

(2) Amend **HB 3207** by adding a new SECTION, and renumbering the remaining sections accordingly:

SECTION __. Section 572.002(4), Government Code, is amended to read as follows:

(4) "Elected officer" means:

(A) a member of the legislature;

(B) an executive or judicial officer elected in a statewide election;

(C) a judge of a court of appeals or of a district court;

(D) a member of the State Board of Education; ~~or~~

(E) a district attorney or criminal district attorney; or

(F) an individual appointed to fill a vacancy in an office or appointed to a newly created office who, if elected to the office instead of appointed, would be an elected officer under this subdivision.

(3) Strike SECTION 15 of the bill, (page 22, engrossed version) (House Bill 3207).

The amendment was read and was adopted by a viva voce vote.

Senator Galloway offered the following amendment to the bill:

Floor Amendment No. 5

Amend **HB 3207** by adding the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill accordingly:

SECTION __. Subchapter B, Chapter 305, Government Code, is amended by adding Section 305.028 to read as follows:

Sec. 305.028. LEGISLATIVE INFLUENCE PROHIBITED. (a) A state agency or a municipality with a population of 1.5 million or more may not:

(1) spend any funds to influence the passage or defeat of legislation;

(2) spend any funds to pay, in whole or in part, the compensation for the full-time employment of an employee who is required to register under this chapter;

(3) spend any funds to pay, in whole or in part, the compensation for the part-time employment of an employee who is required to register under this chapter because of the employee's activities for an industry, profession, or association;

(A) that the employee's agency or municipality regulates;

(B) from which the employee's agency or municipality purchases goods or services; or

(C) to which the employee's agency or municipality provides goods or services, including grants or loans;

(4) employ a person who is required to register under this chapter by virtue of the employee's activities on behalf of the agency or municipality; or

(5) employ a person whose primary duties are activities related to acting as an advocate or proponent of legislation.

(b) An officer or employee of a state agency or a municipality with a population of 1.5 million or more may furnish any member of the legislature or a legislative committee, on request, information in the possession of the officer or employee that is not considered to be confidential under law.

(c) A part-time employee may serve as a lobbyist under this section if the entity for which the person is lobbying is not related to the agency or municipality with which the person is employed.

(d) A state agency or a municipality with a population of 1.5 million or more may employ a person whose primary duties include supplying information to members of the legislative branch, obtaining information from the legislative branch, monitoring the progress of legislation, or testifying before the legislature as a resource witness. A person employed under this section may not testify for or against proposed legislation.

(e) A state agency or a municipality with a population of 1.5 million or more that spends money or employs a person in violation of this section is liable to the state for a civil penalty in an amount equal to three times the compensation paid by the state agency or a municipality to the person. The attorney general may sue to collect the penalty.

(f) In this section, "state agency" means a governmental entity that spends money appropriated to the entity by the General Appropriations Act.

The amendment was read.

POINT OF ORDER

Senator Gallegos raised a point of order that Floor Amendment No. 5 was not germane to the bill.

POINT OF ORDER RULING

The Presiding Officer, Senator Sibley in Chair, stated that the point of order was respectfully overruled.

Question—Shall Floor Amendment No. 5 to **HB 3207** be adopted?

Senator Whitmire offered the following amendment to Floor Amendment No. 5:

Floor Amendment No. 6

Amend Floor Amendment No. 5 to **HB 3207** as follows:

On page 1, line 7, strike "with a population of 1.5 million or more"

The amendment to Floor Amendment No. 5 was read and was adopted by a viva voce vote.

RECORD OF VOTES

Senators Lucio and Madla asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 6.

Question recurring on the adoption of Floor Amendment No. 5 as amended, the amendment as amended failed of adoption by the following vote: Yeas 6, Nays 20.

Yeas: Carona, Galloway, Haywood, Lindsay, Shapleigh, Whitmire.

Nays: Armbrister, Barrientos, Brown, Cain, Duncan, Ellis, Fraser, Gallegos, Lucio, Luna, Madla, Moncrief, Nixon, Ogden, Ratliff, Shapiro, Sibley, Truan, West, Zaffirini.

Absent: Bivins, Harris, Patterson, Wentworth.

Absent-excused: Nelson.

HB 3207 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 3207 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3207** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 3207 was read third time.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 7

Amend **HB 3207** by adding the following appropriately numbered sections and renumbering the existing sections of the bill accordingly:

SECTION _____. The heading to Chapter 159, Local Government Code, is amended to read as follows:

CHAPTER 159. FINANCIAL DISCLOSURE BY COUNTY [OR DISTRICT] OFFICERS AND [COUNTY] EMPLOYEES

SECTION _____. The heading to Subchapter A, Chapter 159, Local Government Code, is amended to read as follows:

SUBCHAPTER A. FINANCIAL DISCLOSURE BY CERTAIN COUNTY [OR DISTRICT] OFFICERS

SECTION _____. Section 159.002(2), Local Government Code, is amended to read as follows:

(2) "County [or district] officer" means a county judge, county commissioner, or county attorney[, ~~district attorney, or criminal district attorney~~].

SECTION _____. Section 159.004(a), Local Government Code, is amended to read as follows:

(a) A county [or district] officer or a candidate for [a] county [or district] office shall file a financial statement as required by this subchapter.

SECTION _____. Section 159.005(a), Local Government Code, is amended to read as follows:

(a) The financial statement must include an account of the financial activity of the county [or district] officer or candidate for [a] county [or

~~district~~] office and an account of the financial activity of the person's spouse and dependent children if the person had actual control over that activity for the preceding calendar year.

SECTION _____. Section 159.008, Local Government Code, is amended to read as follows:

Sec. 159.008. FILING DATES FOR OFFICERS. (a) Not later than the last Friday in April of each year, a county ~~[or district]~~ officer shall file the financial statement required by this subchapter.

(b) A person who is appointed to a county ~~[or district]~~ office or to fill a vacancy in a county ~~[or district]~~ office shall file the first financial statement not later than the 30th day after the date of appointment.

(c) A county ~~[or district]~~ officer may request the county auditor to grant an extension of time of not more than 60 days for filing the statement. The county auditor shall grant the request if it is received before the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. The county auditor may not grant more than one extension to a person in one year except for good cause shown.

SECTION _____. Sections 159.009(a) and (c), Local Government Code, are amended to read as follows:

(a) Not later than the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, a person who is a candidate for [a] county ~~[or district]~~ office, whether partisan or independent, shall file the financial statement required by this subchapter.

(c) A person nominated as a replacement candidate to fill a vacancy in a party nomination for [a] county ~~[or district]~~ office shall file the financial statement not later than the 15th day after the date the certificate of the replacement nomination is filed.

SECTION _____. Sections 159.014(a) and (c), Local Government Code, are amended to read as follows:

(a) A county ~~[or district]~~ officer or a candidate for county office commits an offense if the person [officer] knowingly fails to file a financial statement as required by this subchapter.

(c) It is a defense to prosecution under this section that the person [officer] did not receive copies of the financial statement form required to be mailed to the person [officer] by this subchapter.

SECTION _____. This Act takes effect September 1, 1997.

SECTION _____. (a) A district attorney or criminal district attorney shall file a personal financial statement for 1997 with the Texas Ethics Commission under Chapter 572, Government Code, as if subject to that chapter for the entire year. A district attorney or criminal district attorney who was subject to Subchapter A, Chapter 159, Local Government Code, as that subchapter existed before amendment by this Act, is not required to file a personal financial statement for 1997 under that subchapter.

(b) The change in law made to Section 159.014, Local Government Code, by this Act applies only to an offense committed on or after September 1, 1997. For the purposes of this section, an offense is committed before September 1, 1997, if any element of the offense occurs before the effective date.

(c) An offense committed before September 1, 1997, is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

The amendment was read and was adopted by unanimous consent.

HB 3207 as amended was finally passed by a viva voce vote.

HOUSE BILL 2577 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2577, Relating to the Texas Department of Housing and Community Affairs and to low income and affordable housing.

The bill was read second time.

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2577** as follows:

1) DELETE SECTION 5, Sec. 2306.004 Government Code, Number (7) (On page 5, lines 19-21); and substitute the following:

(7) "Elderly individual" means an individual 60 years of age or older.

2) ADD subsection (c) to: SECTION 47, Section 2306.678 (page 66, (b) after line 5). To read as follows:

(c) The department shall waive grant application fees for non-profits that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

The committee amendment was read.

Senator Lucio offered the following amendment to Committee Amendment No. 1:

Floor Amendment No. 1

Amend Committee Amendment No. 1 (1) to **HB 2577** as follows:

DELETE SECTION 5, Sec. 2306.004, Government Code, Number (7) (Senate committee printing, page 4, lines 35-37); and substitute the following:

(7) "Elderly Individual" means an individual 60 years of age or older or of an age specified by the applicable federal program.

The amendment to Committee Amendment No. 1 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Committee Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 2577** by adding a new appropriately numbered section to read as follows, and renumbering existing sections accordingly:

SECTION ____ Section 373.005, Local Government Code, is amended by adding a new subsection (d) to read as follows:

(d) A municipality may issue notes or other obligations guaranteed by the Secretary of Housing and Urban Development under Section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5308), as amended, for the purpose of providing financing for those activities described in Section 108 of the Housing and Community Development Act (42 U.S.C. 5308), as amended, in furtherance of an approved community development program. The Section 108 guaranteed notes additionally may be secured by and made payable from the same sources as obligations issued under Subchapter C, Chapter 271, Local Government Code, subject to the notice provisions set forth therein. The Section 108 guaranteed notes or other obligations may be issued in such form, denominations, manner, terms and conditions, bear interest at such rates, be interim or permanent notes or obligations, be subject to transfer, exchange, change, conversion, or replacement, and be sold in such manner, at such price, and under such terms, all as provided in the ordinance or resolution authorizing the issuance of such Section 108 guaranteed notes or obligations.

The committee amendment was read and was adopted by a viva voce vote.

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 3

1. Amend HB 2577, SECTION 29, Sec. 2306.202 by adding on page 33, line 4 after "Chapter," and before "the" but subject to the limitations in Section 2306.251(c), Government Code.

2. Amend HB 2577 by adding in SECTION 45, SUBCHAPTER Y, a new Section 2306.5543 as follows:

Sec. 2306.5543. PERSONNEL POLICIES. The board of directors of the corporation shall develop and implement personnel policies, including policies relating to employee conflicts of interest, that are substantially similar to comparable policies that govern state employees.

3. Amend HB 2577 by adding in SECTION 45, SUBCHAPTER Y, a new Section 2306.5555 as follows:

Sec. 2306.5555. PUBLIC ACCESS. The board of directors of the corporation shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board of directors and to speak on any issue under the jurisdiction of the corporation.

The committee amendment was read and was adopted by a viva voce vote.

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 4

Amend HB 2577 as follows: Strike Section 49 of the bill and renumber the subsequent sections appropriately.

The committee amendment was read and was adopted by a viva voce vote.

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 5

Amend **HB 2577**, SECTION 23. Section 2306.111, Government Code, by adding on page 28, following line 22 the following:

(c) In administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12704 et seq.) the department shall give the highest priority to utilizing these funds for the benefit of non-participating small cities and rural areas which do not qualify to receive funds under the Cranston-Gonzalez National Affordable Housing Act directly from the U.S. Department of Housing and Urban Development unless the department finds there is insufficient need and demand for housing funds within these areas.

The committee amendment was read and was adopted by a viva voce vote.

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 6

Amend **HB 2577** as follows

1) Amend SECTION 16, Section 2306.0723, Government Code (page 25, line 4) by deleting the line after the word "San Antonio", and substituting the following:

Lower Rio Grande Valley, and at least two

2) Amend SECTION 9, Section 2306.033, Government Code (d) (page 13, lines 19 and 21) as follows:

Strike on line 19 after the word "board" the words "may have" and substitute with "has";

ADD on line 21 after the word "board" , and provide to said officer evidence of such criminal behavior or conduct.

The committee amendment was read.

Senator Lucio offered the following amendment to Committee Amendment No. 6:

Floor Amendment No. 2

Amend Committee Amendment No. 6 to **HB 2577** as follows:

(1) In the recital of SECTION 9 of the bill (Senate committee printing, page 7, line 24), strike "and adding Subsection (d)".

(2) In SECTION 9 of the bill, strike added Section 2306.033(d), Government Code (Senate committee printing, page 7, lines 44-48).

The amendment to Committee Amendment No. 6 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Committee Amendment No. 6 as amended, the committee amendment as amended was adopted by a viva voce vote.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 2577** as follows:

In SECTION 27 of the bill, in added Section 2306.184(c), Government Code (Senate committee printing report, page 14, lines 28-31), By STRIKING "Not later than the 30th day after the date the term of a project for which an application was granted for a grant, loan, or other assistance described by Subsection (b) expires, the recipient must provide to the department a statement that includes:"

And Substitute the following:

"(c) Upon completion of the project, applicant shall cost certify said project and include the following:"

The amendment was read and was adopted by a viva voce vote.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 4

Amend **HB 2577** committee report printing as follows:

(1) In SECTION 45, amending Section 2306.559 (a), Government Code (page 23, lines 49-51, committee report printing), STRIKE "Not later than the 30th day after the date the corporation's board of directors received the report, the" and SUBSTITUTE "The" for the remainder of the sentence.

(2) In SECTION 45, in Section 2306.559(b), Government Code (page 23, lines 55-56, committee report printing) STRIKE subsection (b) and SUBSTITUTE with the following:

"(b) The corporation shall file the report by the date established in the General Appropriations Act [before the 90th day after the last day of the corporation's fiscal year]."

(3) In SECTION 45, Section 2306.560, Government Code (page 24, committee report printing) STRIKE lines 5-11, after the word "year" on line 5. ADD the following:

"The corporation shall file a copy of the audit with the department and shall submit the audited report to the governor, lieutenant governor, speaker of the house of representatives, comptroller, Bond Review Board, State Auditor's Office, and the legislative Budget Board not later than the 30th day after the submission date established in the General Appropriations Act for the annual financial report."

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 5

Amend **HB 2577** by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION ____ . Subchapter K, Chapter 2306, Government Code, is amended by adding Section 2306.253 to read as follows:

Sec. 2306.253. HOME BUYER EDUCATION PROGRAM. (a) The department shall develop and implement a statewide home buyer education program designed to provide information and counseling to prospective home buyers about the home buying process. The department shall implement the program by contracting with the Texas Agricultural Extension Service to provide the information and counseling on behalf of the department.

(b) The department and the extension service shall develop the program in cooperation with the Texas Department of Human Services, the Real Estate Research Center at Texas A&M University, the Texas Workforce Commission, and advocates of affordable housing. The department and the extension service shall implement the program through self-help centers when feasible.

(c) The department and the extension service shall make full use of existing training and informational materials available from sources such as the federal Department of Housing and Urban Development, the cooperative extension system, and the Neighborhood Reinvestment Corporation.

(d) To pay the extension service for the service's costs under the contract, the department may use money available to the department for housing purposes that the department is not prohibited from spending on the home buyer education program, including the amount of administrative or service fees the department receives from the issuance or refunding of bonds that exceeds the amount the department needs to pay its overhead costs in administering its bond programs.

SECTION ____ . The Texas Department of Housing and Community Affairs shall begin to implement Section 2306.253, Government Code, as added by this Act, as soon as possible and shall fully implement the home buyer education program with educational materials available in all counties not later than September 1, 1998.

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 6

Amend **HB 2577** by adding the following section to the bill, appropriately numbered, and renumbering the existing section of the bill appropriately:

SECTION ____ . Subchapter K, Chapter 2306, Government Code, is amended by adding Section 2306.253 to read as follows:

Sec. 2306.253. TENANT SERVICES PROGRAM. (a) In this section, "tenant services" means social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low-income housing under Title IV-A, Social Security Act (42 U.S.C. Section 601 et seq.), and other similar services.

(b) The department shall structure the requirements for the provision of tenant services so that tenant services provided through housing programs are coordinated with similar services provided through state workforce development and welfare programs. The department shall emphasize tenant

services that are eligible for additional federal matching funds through workforce development or welfare-related programs.

(c) The department shall designate a department employee as the tenant services program coordinator. The coordinator shall serve as a liaison to the Texas Workforce Commission, the Texas Department of Human Services, the Department of Protective and Regulatory Services, and the Legislative Budget Board on matters relating to the coordination of tenant services programs.

The amendment was read and was adopted by a viva voce vote.

Senator Moncrief, on behalf of Senator Patterson, offered the following amendment to the bill:

Floor Amendment No. 7

Amend **HB 2577** by adding the following appropriately numbered sections to the bill and renumbering subsequent sections of the bill appropriately:

SECTION ____ Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.010 to read as follows:

Sec. 5.010. NOTICE OF HOMESTEAD FORECLOSURE INFORMATION. (a) A seller of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property before the transfer of the property a written notice as prescribed by this section.

(b) The notice must be conspicuous and printed in 14-point bold-faced type and read substantially similar to the following:

NOTICE OF HOMESTEAD FORECLOSURE INFORMATION
CONCERNING THE PROPERTY AT (street address and city)
WARNING: UNDER TEXAS LAW, YOU MAY LOSE THIS PROPERTY
THROUGH FORECLOSURE, EVEN IF IT IS DESIGNATED AS
HOMESTEAD PROPERTY, IF YOU FAIL TO TIMELY PAY ANY OF THE
FOLLOWING OBLIGATIONS:

(1) a purchase money obligation secured by a lien on this property;
(2) a home improvement contract obligation secured by a lien on
this property;

(3) a property owners' association assessment and certain related
costs secured by a lien on this property, including a lien provided for in
restrictive covenants applicable to this property;

(4) ad valorem property taxes assessed against this property;

(5) federal income taxes owed by you; or

(6) a lien on this property that preexists your purchase of this
property and that was not paid at the time you purchased this property.

Depending on state law or the terms of the agreement relating to the
financial obligation, a financial obligation listed above may be foreclosed by
judicial foreclosure, which would require the filing of a lawsuit against you,
or by nonjudicial foreclosure, which would require notifying you but would
not require the filing of a lawsuit against you. In certain circumstances,
attorney's fees and other costs associated with the foreclosure may be added

to the original obligation, which would increase the amount of the debt owed.

If you cease using this home as your primary residence or otherwise lose your homestead exemption, the failure to timely pay financial obligations other than those listed above may result in the foreclosure of this property.

I UNDERSTAND THAT I CAN LOSE THIS PROPERTY THROUGH FORECLOSURE FOR THE REASONS STATED ABOVE.

Date:

Signature of Purchaser

Print Name:

Property Address:

(c) The seller's failure to provide the notice required by this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

SECTION _____. The change in law made by Section 5.010, Property Code, as added by this Act, applies only to a real property transaction described by Section 5.010, Property Code, as added by this Act, in which the transfer of the property occurs on or after the effective date of this Act.

The amendment was read and was adopted by a viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 8

Amend **HB 2577**, SECTION 45, Section 2306.560, by inserting a new subsection (i) to read as follows:

(i) All transfers of funds, personnel, or in-kind contributions from the department to the corporation must be approved by the Legislative Budget Board.

The amendment was read.

Senator Ratliff offered the following amendment to Floor Amendment No. 8:

Floor Amendment No. 8A

Amend Floor Amendment No. 8 to **HB 2577**, Section 45, Section 2306.560, by striking the amendment and inserting a new subsection (i) to read as follows:

(i) All transfers of funds, personnel, or in-kind contributions from the department to the corporation must be reported to the Legislative Budget Board.

The amendment to Floor Amendment No. 8 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 8 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 9

Amend **HB 2577** as follows:

Delete proposed Sec. 2306.677. BOARD INFLUENCE PROHIBITED. beginning on page 27, line 61 in Section 47 and renumber subsequent sections.

The amendment was read and was adopted by a viva voce vote.

HB 2577 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2577 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2577** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 2577 was read third time and was passed by a viva voce vote.

AT EASE

The Presiding Officer, Senator Sibley in Chair, at 12:55 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Sibley at 1:17 p.m. called the Senate to order as In Legislative Session.

HOUSE BILL 328 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 328, Relating to an exemption to the licensing requirements for irrigators.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 328** as follows:

(1) Strike the words "or managed" on page 1, line 26 of the committee printing.

(2) Strike the words "or by an employee of the association or its managing agent." on page 1, lines 48-49 of the committee printing.

(3) Strike the words "a portion of the" on page 1, line 51 of the committee printing.

The amendment was read and was adopted by the following vote: Yeas 29, Nays 1.

Nays: Moncrief.

Absent-excused: Nelson.

HB 328 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Wentworth asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 328 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 328** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Nixon, Ogden, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, West, Whitmire, Zaffirini.

Nays: Moncrief, Wentworth.

Absent-excused: Nelson.

HB 328 was read third time and was passed by the following vote: Yeas 28, Nays 2. (Same as previous roll call)

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

Saturday, May 24, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas
Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 292, Instructing the enrolling clerk of the house to make technical corrections in H.B. 1855.

HCR 294, Instructing the enrolling clerk to correct House Bill No. 2071.

HCR 295, Recognizing the Resource Connection of Tarrant County.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 10 (Viva-voce vote)

HB 130 (140 Yeas 0 Nays 1 Present-not voting)

HB 253 (139 Yeas 0 Nays 1 Present-not voting)

HB 349 (Viva-voce vote)

HB 658 (Viva-voce vote)

HB 697 (Viva-voce vote)

HB 819 (Viva-voce vote)

HB 1168 (130 Yeas 3 Nays 1 Present-not voting)
HB 1173 (Viva-voce vote)
HB 1356 (137 Yeas 0 Nays 1 Present-not voting)
HB 1418 (Viva-voce vote)
HB 1611 (122 Yeas 18 Nays 2 Present-not voting)
HB 1734 (Viva-voce vote)
HB 1755 (Viva-voce vote)
HB 1886 (Viva-voce vote)
HB 1961 (138 Yeas 0 Nays 2 Present-not voting)
HB 2033 (Viva-voce vote)
HB 2062 (Viva-voce vote)
HB 2261 (Viva-voce vote)
HB 2380 (Viva-voce vote)
HB 2561 (Viva-voce vote)
HB 2626 (Viva-voce vote)
HB 2681 (135 Yeas 0 Nays 2 Present-not voting)
HB 2874 (Viva-voce vote)
HB 3012 (Viva-voce vote)
HB 3054 (Viva-voce vote)
HB 3086 (Viva-voce vote)
HB 3137 (Viva-voce vote)
HB 3203 (Viva-voce vote)
HB 3278 (140 Yeas 0 Nays 1 Present-not voting)
HB 3279 (141 Yeas 0 Nays 1 Present-not voting)
HB 3383 (Viva-voce vote)
HB 3428 (Viva-voce vote)
HCR 21 (Viva-voce vote)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 583

House Conferees: Maxey - Chair/Dutton/Ehrhardt/Galloway, Carolyn/Hernandez

HB 1028

House Conferees: Krusee - Chair/Hamric/Jackson/Mowery/Turner, Bob

HB 2339

House Conferees: Talton - Chair/Denny/Heflin/Howard/Staples

HB 2394

House Conferees: Delisi - Chair/Cuellar/Dutton/Kamel/Rangel

HB 2503

House Conferees: Garcia - Chair/Averitt/Burnam/Lewis, Glenn/Wise

HB 2517

House Conferees: Dunnam - Chair/Bailey/Cuellar/Reyna, Elvira/Solis

HB 2644

House Conferees: Telford - Chair/Bosse/Gray/Rangel/Tillery

HB 3139

House Conferees: Brimer - Chair/Dukes/Giddings/Rhodes/Solomons

HB 3263

House Conferees: Dutton - Chair/Bailey/Clark/Hodge/Wohlgemuth

HB 3522

House Conferees: Rhodes - Chair/Brimer/Dukes/Solomons/Woolley

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 228

House Conferees: Hightower - Chair/Goodman/Keel, Terry/Place/Woolley

SB 1284

House Conferees: Chavez - Chair/Corte/Hodge/Rabuck/Wise

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1235 (Viva-voce vote)

HB 1710 (Viva-voce vote)

HB 1836 (Viva-voce vote)

HB 1880 (Viva-voce vote)

SB 606 (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 361**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 24, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 361** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MADLA
GALLEGOS
GALLOWAY
PATTERSON

GRAY
GLAZE
HIRSCHI
JANEK
TELFORD

On the part of the Senate On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas State Board of Acupuncture Examiners; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 6.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.02. DEFINITIONS. In this subchapter:

(1) "Acupuncture" means:

(A) the nonsurgical, nonincisive insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition; and

(B) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by Paragraph (A) of this subdivision.

(2) "Acupuncturist" means a person who practices acupuncture.

(3) "Acupuncture board" means the Texas State Board of Acupuncture Examiners.

(4) "Chiropractor" means a licensee of the Texas Board of Chiropractic Examiners.

(5) "Executive director" means the executive director of the Texas State Board of Medical Examiners.

(6) "Medical board" means the Texas State Board of Medical Examiners.

(7) "Physician" means a licensee of the Texas State Board of Medical Examiners.

SECTION 2. Section 6.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (d), (g), and (h) and adding Subsections (i) through (l) to read as follows:

(b) A person ~~[The following persons]~~ may not serve on the acupuncture board ~~if the~~:

~~[(1) a] person [who] is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the medical board or acupuncture board [and its subsequent amendments; and~~

~~[(2) a person who is currently employed by or serving as president, vice-president, secretary, or treasurer of a statewide or national organization incorporated for the purpose of representing a health care profession in this state or the United States].~~

(d) The governor shall designate a member of the acupuncture board as the presiding officer of the acupuncture board to serve in that capacity at the pleasure of the governor ~~[from the members of the acupuncture board]~~.

(g) A person is not eligible for appointment as a public member of the acupuncture board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the medical board or receiving funds from the medical board or acupuncture board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the medical board or acupuncture board or receiving funds from the medical board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the medical board or acupuncture board, other than compensation or reimbursement authorized by law for the acupuncture board membership, attendance, or expenses.

(h) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the acupuncture board or an employee of the medical board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(i) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the acupuncture board and may not be an employee of the medical board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(j) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest ~~[The acupuncture board is subject to the open meetings law, the open records law, and the Administrative Procedure Act and any subsequent amendments].~~

(k) Appointments to the acupuncture board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(l) ~~(h)~~ The acupuncture board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2005 ~~[1997]~~.

SECTION 3. Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Sections 6.041 and 6.042 to read as follows:

Sec. 6.041. GROUNDS FOR REMOVAL FROM ACUPUNCTURE BOARD. (a) It is a ground for removal from the acupuncture board if a member:

(1) does not have at the time of appointment the qualifications required by Sections 6.04(a) and (g) of this Act;

(2) does not maintain during service on the acupuncture board the qualifications required by Sections 6.04(a) and (g) of this Act;

(3) violates a prohibition established by Section 6.04(b), (h), or (i) of this Act;

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled acupuncture board meetings that the member is eligible to attend during a calendar year.

(b) The validity of an action of the acupuncture board is not affected by the fact that it is taken when a ground for removal of an acupuncture board member exists.

(c) If the executive director of the medical board has knowledge that a potential ground for removal of a member of the acupuncture board exists, the executive director shall notify the presiding officer of the acupuncture board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director of the medical board shall notify the next highest officer of the acupuncture board, who shall notify the governor and the attorney general that a potential ground for removal exists.

(d) The executive director of the medical board or the executive director's designee shall provide to members of the acupuncture board, as often as necessary, information regarding their qualification for office under this subchapter and their responsibilities under applicable laws relating to standards of conduct for state officers.

Sec. 6.042. BOARD MEMBER TRAINING. (a) To be eligible to take office as a member of the acupuncture board, a person appointed to the acupuncture board must complete at least one course of a training program that complies with this section.

(b) The training program must provide information to the person regarding:

(1) the enabling legislation that created the acupuncture board and its policymaking body to which the person is appointed to serve;

(2) the programs operated by the acupuncture board;

(3) the role and functions of the acupuncture board;

(4) the rules of the acupuncture board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the acupuncture board;

(6) the results of the most recent formal audit of the acupuncture board;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interests laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the medical board or the Texas Ethics Commission.

(c) A person appointed to the acupuncture board is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the acupuncture board.

SECTION 4. Section 6.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.05. POWERS AND DUTIES OF ACUPUNCTURE BOARD.

(a) Subject to the advice and approval of the medical board, the acupuncture board shall:

(1) establish qualifications for an acupuncturist to practice in this state;

(2) establish minimum educational and training requirements necessary for the acupuncture board to recommend that the medical board issue a license to practice acupuncture;

(3) administer an examination that is validated by independent testing professionals for a license to practice acupuncture;

(4) develop requirements for licensure by endorsement of other states;

(5) prescribe the application form for a license to practice acupuncture;

(6) make recommendations on applications for licenses to practice acupuncture;

(7) develop and implement policies that provide the public with a reasonable opportunity to appear before the acupuncture board and to speak on any issue under the jurisdiction of the acupuncture board [establish a procedure for reporting and processing complaints relating to the practice of acupuncture under this article];

(8) establish the requirements for a tutorial program for students who have completed at least 48 semester hours of college; ~~and~~

(9) develop and implement policies that clearly separate the policymaking responsibilities of the acupuncture board and the management responsibilities of the executive director and the staff of the medical board; and

(10) recommend additional rules as are necessary for the administration and enforcement of this subchapter.

(b) The acupuncture board shall comply with federal and state laws related to program and facility accessibility. The executive director of the medical board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the acupuncture board's programs and services.

(c) Notwithstanding Subsection (a) of this section, the acupuncture board has no independent rulemaking authority.

SECTION 5. Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Sections 6.051, 6.071, 6.075, and 6.085 to read as follows:

Sec. 6.051. PUBLIC INTEREST INFORMATION; COMPLAINTS.

(a) The acupuncture board shall prepare information of public interest describing the functions of the acupuncture board and the procedures by which complaints are filed with and resolved by the acupuncture board. The acupuncture board shall make the information available to the public and appropriate state agencies.

(b) The acupuncture board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the acupuncture board for the purpose of directing complaints under this subchapter to the acupuncture board. The acupuncture board may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated under this subchapter;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this subchapter; or

(3) in a bill for service provided by an individual or entity regulated under this subchapter.

(c) The acupuncture board shall keep a file about each written complaint filed with the acupuncture board under this subchapter that the acupuncture board has authority to resolve. The acupuncture board shall provide to the person filing the complaint and the persons or entities complained about the acupuncture board's policies and procedures pertaining to complaint investigation and resolution. The acupuncture board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an investigation.

(d) The acupuncture board shall keep information about each complaint filed with the acupuncture board under this subchapter. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the acupuncture board took no action, an explanation of the reason the complaint was closed without action.

Sec. 6.071. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the acupuncture board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the acupuncture board shall notify examinees of the results of the examination not later than the 14th day after the date on which the acupuncture board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the acupuncture board shall notify the examinee of the reason for the delay before the 90th day. The acupuncture board may require a testing service to notify examinees of the results of an examination.

(b) If requested in writing by a person who fails a licensing examination administered under this subchapter, the acupuncture board shall furnish the person with an analysis of the person's performance on the examination if an analysis is available from the national testing service.

Sec. 6.075. TEMPORARY LICENSE. (a) The acupuncture board may, through the executive director of the medical board, issue a temporary license to an applicant who:

(1) submits an application on a form prescribed by the acupuncture board;

(2) has passed a national or other examination recognized by the acupuncture board relating to the practice of acupuncture;

(3) pays the appropriate fee prescribed by the medical board;

(4) if licensed in another state, the District of Columbia, or a territory of the United States, is in good standing as an acupuncturist; and

(5) meets all the qualifications for a license under this Act but is waiting for the next scheduled meeting of the medical board for the license to be issued.

(b) A temporary license is valid for 100 days from the date issued and may be extended only for another 30 days after the date the initial temporary license expires.

Sec. 6.085. ADVERTISING. (a) The medical board may not adopt rules under this subchapter restricting competitive bidding or advertising by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the medical board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

SECTION 6. Section 6.09, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) All money paid to the medical board under this subchapter is subject to Subchapter F, Chapter 404, Government Code.

(d) The medical board shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the medical board under this subchapter during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

SECTION 7. Section 6.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.10. ISSUANCE AND RENEWAL OF LICENSE. (a) After consulting the acupuncture board, the medical board shall issue a license to practice acupuncture in this state to a person who meets the requirements of this subchapter and the rules adopted under this subchapter.

(b) The medical board may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state.

(c) The medical board shall by rule provide for the annual renewal of a license to practice acupuncture.

(d) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the medical board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under the provisions of this section.

(e) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the medical board one and one-half times the required renewal fee.

(f) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the medical board two times the required renewal fee.

(g) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(h) If the person was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application, the person may renew an expired license without reexamination. The person must pay to the medical board a fee that is equal to two times the required renewal fee for the license.

(i) At least 30 days before the expiration of a person's license, the medical board shall send written notice of the impending license expiration to the person at the license holder's last known address according to the records of the medical board.

(j) The medical board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 8. Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 6.101 to read as follows:

Sec. 6.101. LICENSE HOLDER INFORMATION. (a) Each license holder shall file with the board:

- (1) the license holder's mailing address;
- (2) the address of the license holder's residence;
- (3) the mailing address of each of the license holder's offices; and
- (4) the address for the location of each of the license holder's offices if that address is different from the office's mailing address.

(b) A license holder shall:

(1) notify the acupuncture board of a change of the license holder's residence or business address; and

(2) provide the acupuncture board with the license holder's new address not later than the 30th day after the date the address change occurs.

SECTION 9. Section 6.11, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended, and Subsections (b) through (g) of that section are redesignated as Section 6.115, to read as follows:

Sec. 6.11. DENIAL OF LICENSE; DISCIPLINE OF LICENSE HOLDER.

(a) A license to practice acupuncture may be denied or, after notice and hearing, suspended, probated, or revoked if the applicant for a license or the holder of a license:

(1) uses drugs or intoxicating liquors to an extent that affects the person's professional competence;

(2) obtains or attempts to obtain a license by fraud or deception;

(3) has been [is] adjudged mentally incompetent by a court of competent jurisdiction or has a mental or physical condition that renders the person unable to perform safely as an acupuncturist;

(4) has practiced [practices] acupuncture in a manner detrimental to the public health and welfare;

(5) violates this subchapter or a rule adopted under this subchapter;

(6) has been [is] convicted of a felony or a crime involving moral turpitude; [or]

(7) holds the person [himself] out as a physician or surgeon or any combination or derivative of those terms unless the person is also licensed by the medical board as a physician or surgeon;

(8) fraudulently or deceptively uses a license;

(9) has acted in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure a member of the public;

(10) has committed an act in violation of state law if the act is connected with the person's practice as an acupuncturist; or

(11) has had the person's license suspended, revoked, or restricted, has had other disciplinary action taken by another state regarding the person's practice as an acupuncturist, or has had disciplinary action taken against the person by the uniformed services of the United States based on acts by the license holder similar to acts described in this section.

(b) A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of Subsection (a)(10) of this section. Proof of the commission of the act while in practice as an acupuncturist or under the guise of practice as an acupuncturist is sufficient for action by the medical board under this section.

(c) A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of the action under Subsection (a)(11) of this section.

Sec. 6.115. SCOPE OF PRACTICE. (a) [(b)] Except as provided by Subsection (b) [(c)] of this section, a license to practice acupuncture shall be denied or, after notice and hearing, revoked if the holder of a license has performed acupuncture on a person who was not evaluated by a physician or

dentist, as appropriate, for the condition being treated within six months before the date acupuncture was performed.

(b) [(c)] The holder of a license may perform acupuncture on a person who was referred by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners if the licensee commences the treatment within 30 days of the date of the referral. The licensee shall refer the person to a physician after performing acupuncture 20 times or for 30 days, whichever occurs first, if no substantial improvement occurs in the person's condition for which the referral was made.

(c) [(d)] The holder of a license must obtain reasonable documentation that the evaluation required by Subsection (a) [(b)] of this section has taken place. If the licensee is unable to determine that an evaluation has taken place, the licensee must obtain a written statement signed by the person on a form prescribed by the acupuncture board that states that the person has been evaluated by a physician within the prescribed time frame. The form shall contain a clear statement that the person should be evaluated by a physician for the condition being treated by the licensee.

(d) [(e)] The medical board with advice from the acupuncture board by rule may modify the requirement of the time frame or the scope of the evaluation under Subsection (a) [(b)] of this section.

(e) [(f)] The medical board with advice from the acupuncture board by rule may modify the requirement of the time frame for commencement of treatment after referral by a chiropractor or the number of treatments or days before referral to a physician is required under Subsection (b) [(c)] of this section.

(f) [(g)] Notwithstanding Subsections (a) [(b)] and (b) [(c)] of this section, an acupuncturist holding a current and valid license may without a referral from a physician, dentist, or chiropractor perform acupuncture on a person for smoking addiction, weight loss, or, as established by the medical board with advice from the acupuncture board by rule, substance abuse.

SECTION 10. Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Sections 6.116, 6.117, and 6.118 to read as follows:

Sec. 6.116. ADDITIONAL DISCIPLINARY AUTHORITY. In addition to the authority under Section 6.11 of this Act, the acupuncture board, on finding that an acupuncturist has committed an offense described in Section 6.11 of this Act, may:

(1) require the acupuncturist to submit to the care, counseling, or treatment of a health care practitioner designated by the acupuncture board;

(2) stay enforcement of an order and place the acupuncturist on probation with the acupuncture board retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section;

(3) restore or reissue a license or remove any disciplinary or corrective measure that the acupuncture board may have imposed;

(4) order the acupuncturist to perform public service;

(5) limit the acupuncturist's practice to the areas prescribed by the acupuncture board;

(6) require an acupuncturist to report regularly to the acupuncture board on matters that are the basis of the probation; or

(7) continue or review professional education until the practitioner attains a degree of skill satisfactory to the acupuncture board in those areas that are the basis of the probation.

Sec. 6.117. SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE. If the medical board proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Rules of practice adopted by the medical board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Sec. 6.118. REHABILITATION ORDER. (a) The acupuncture board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on any licensee or, as a prerequisite for issuing a license, on any licensure applicant based on one or more of the following:

(1) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) self-reported intemperate use of drugs or alcohol during the last five years immediately preceding the report which could adversely affect the reporter's ability to safely practice as an acupuncturist, but only if the reporting individual has not previously been the subject of a substance abuse related order of the acupuncture board;

(3) judgment by a court of competent jurisdiction that the individual is of unsound mind; or

(4) results from a mental or physical examination, or admissions by the individual, indicating that the licensee or applicant suffers from a potentially dangerous limitation or an inability to safely practice as an acupuncturist with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(b) A rehabilitation order entered pursuant to this section shall be a nondisciplinary private order and shall contain findings of fact and conclusions of law. A rehabilitation order, if entered by agreement, shall be an agreed disposition or settlement agreement for purposes of civil litigation and shall be exempt from the open records law.

(c) A rehabilitation order entered pursuant to this section may impose a revocation, cancellation, suspension, period of probation or restriction, or any other terms and conditions authorized under this Act or as otherwise agreed to by the acupuncture board and the individual subject to the order.

(d) Violation of a rehabilitation order entered pursuant to this section may result in disciplinary action under the provisions of this Act for contested matters or pursuant to the terms of the agreed order. A violation of a rehabilitation order may be grounds for disciplinary action based on unprofessional or dishonorable conduct or on any of the provisions of this Act

which may apply to the misconduct which resulted in violation of the rehabilitation order.

(e) The rehabilitation orders entered pursuant to this section shall be kept in a confidential file which shall be subject to an independent audit by state auditors or private auditors contracted with by the acupuncture board to perform such an audit. Audits may be performed at any time at the direction of the acupuncture board but shall be performed at least once every three years. The audit results shall be reported in a manner that maintains the confidentiality of all licensees who are subject to rehabilitation orders and shall be a public record. The audit shall be for the purposes of ensuring that only qualified licensees are subject to rehabilitation orders.

SECTION 11. Subsection (b), Section 6.12, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An offense under Subsection (a) of this section is a felony of the third degree [~~Class A misdemeanor~~].

SECTION 12. Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 6.125 to read as follows:

Sec. 6.125. SUBPOENAS. (a) On behalf of the acupuncture board, the executive director of the medical board or the presiding officer of the acupuncture board may issue a subpoena or subpoena duces tecum for purposes of:

(1) investigations or contested proceedings related to:

(A) alleged misconduct by an acupuncturist; or

(B) an alleged violation of this Act or other law related to practice as an acupuncturist or to the provision of health care under the authority of this Act;

(2) a determination whether to issue, suspend, restrict, revoke, or cancel a license authorized by this subchapter; and

(3) a determination whether to deny or grant an application for a license under this subchapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the acupuncture board or any other licensing or regulatory agency with jurisdiction over the individual or entity subject to the subpoena; and

(2) denial of a license application.

SECTION 13. (a) The change made by this Act to Section 6.12, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 14. The changes in law made by this Act in the qualifications of, and the prohibitions applying to, members of the Texas State Board of Acupuncture Examiners do not affect the entitlement of a member serving on

the board immediately before September 1, 1997, to continue to carry out the functions of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 1997. This Act does not prohibit a person who is a member of the board on September 1, 1997, from being reappointed to the board if the person has the qualifications required for a member under Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as amended by this Act.

SECTION 15. This Act takes effect September 1, 1997, and applies only to a license issued or renewed by the Texas State Board of Medical Examiners under Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), on or after that date.

SECTION 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1310

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 24, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1310** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS
WHITMIRE
GALLEGOS
LINDSAY

JANEK
FLORES
ISETT
MOFFAT
PITTS

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to historic structures, including the restoration and preservation of historic structures by municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 271.0461, Local Government Code, is amended to read as follows:

Sec. 271.0461. **ADDITIONAL PURPOSE FOR CERTIFICATES: DEMOLITION OF DANGEROUS STRUCTURES OR RESTORATION OF HISTORIC STRUCTURES**. Certificates may be issued by any municipality for the payment of contractual obligations to be incurred in demolishing dangerous structures or restoring historic structures and may be sold for cash, subject to the restrictions and other conditions of Section 271.050.

SECTION 2. Section 442.001, Government Code, is amended to read as follows:

Sec. 442.001. **DEFINITION**. In this chapter, "historic structure" means a structure that:

(1) is included on the National Register of Historic Places;
(2) is designated as a Recorded Texas Historic Landmark;
(3) is designated as a State Archeological Landmark;
(4) is determined by the Texas Historical Commission to qualify as eligible property under criteria for inclusion on the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark or as a State Archeological Landmark; ~~or~~

(5) is certified by the Texas Historical Commission to other state agencies as worthy of preservation; or

(6) is designated by an ordinance of a municipality with a population of more than 1.5 million as historic.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 273**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 24, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 273** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ZAFFIRINI
ELLIS
GALLEGOS
HAYWOOD

CUELLAR
CHAVEZ
MAXEY
NAISHTAT
PITTS

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to development of a statewide consumer guide for senior citizens and to coordination of state activities relating to aging; authorizing a study relating to long-term health care.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.026 to read as follows:

Sec. 403.026. SENIOR CITIZEN CONSUMER GUIDE; INTERAGENCY WORK GROUP. (a) The comptroller shall develop and annually update a statewide consumer guide for senior citizens designed to assist senior citizens and their families in making informed choices regarding available senior services. The guide must:

(1) contain a directory of service providers for senior citizens in a format developed by the interagency work group created under Subsection (b) and arranged by geographical area if appropriate;

(2) contain comprehensive information on services available to senior citizens, including long-term care services, housing assistance, meals, personal care, and transportation;

(3) enable a senior citizen or a person assisting a senior citizen to identify and assess each option available for meeting a senior citizen's individual needs; and

(4) prominently display:

(A) the regional toll-free access number of the appropriate area agency on aging; and

(B) the toll-free number of the Texas Department on Aging.

(b) An interagency work group is created to assist the comptroller in developing and updating the guide. The work group is composed of representatives from:

(1) the comptroller's office, appointed by the comptroller;

(2) the Texas Department on Aging, appointed by the executive director of that agency;

(3) the Texas Department of Human Services, appointed by the commissioner of human services;

(4) the Texas Department of Housing and Community Affairs, appointed by the director of that agency;

(5) the Health and Human Services Commission, appointed by the commissioner of health and human services;

(6) the Texas Department of Insurance, appointed by the commissioner of insurance;

(7) the office of the attorney general, appointed by the attorney general; and

(8) consumer groups representing senior citizen interests, appointed by the executive director of the Texas Department on Aging.

(c) The comptroller may request that other state agencies or universities designate representatives to serve on the work group in addition to the representatives listed in Subsection (b) if the agency or university requested to participate has an employee with specialized expertise or knowledge of a subject matter to be included in the guide.

(d) A member of the work group serves at the will of the appointing entity.

(e) The comptroller shall appoint a member of the work group to serve as presiding officer, and members of the work group shall elect any other necessary officers.

(f) The work group shall meet at the call of the presiding officer.

(g) The appointing entity is responsible for the expenses of a member's service on the work group. A member of the work group receives no additional compensation for serving on the work group.

(h) The work group is not subject to Article 6252-33, Revised Statutes.

(i) The entities listed in Subsections (b)(2)-(7) shall take all action necessary to assist the comptroller in developing and updating the guide, including providing staff with expertise in information and referral services and other necessary information, but may not diminish services required to be provided by other law.

(j) The work group may modify the contents of the guide if the modifications do not detract from the goal of increasing consumer access to senior services.

(k) The comptroller shall make the guide available to:

(1) the public through the Internet; and

(2) each area agency on aging and, on request, to another state agency in electronic format.

(l) To the extent practicable, the comptroller shall ensure that the guide is available to the public in a large-print format and in other alternate formats as necessary to enable all consumers to use the guide.

(m) In conducting the work needed to develop the statewide consumer guide for senior citizens, the interagency work group shall consult with consumer and provider groups involved in the delivery of long-term care services.

(n) The work group shall also develop and submit to the comptroller:

(1) a list of necessary senior services that are not generally available;

(2) recommendations for improving coordinated delivery of a continuum of care for senior citizens; and

(3) recommendations relating to a comprehensive bill of rights for senior citizens.

SECTION 2. Section 101.022, Human Resources Code, is amended by adding Subsections (f) and (h) to read as follows:

(f) The department shall lead a group of state agencies formed to identify and address in cooperative efforts all major public policy issues relating to the aging of Texas residents. The group shall include the office of the comptroller, the Employees Retirement System of Texas, the Texas Department of Housing and Community Affairs, the Texas Department of Insurance, and each health and human services agency, as defined by Section 531.001, Government Code. The group may include other agencies identified by the executive director of aging. To the extent possible without adversely impacting other duties, each agency included in the group shall cooperate with the department and contribute as appropriate to the department's and group's efforts relating to aging.

(h) The department shall form a broad-based coalition of the public and private sectors in developing materials and conducting public information campaigns to assist Texas residents in preparing for retirement and aging from a holistic perspective. The coalition shall include representatives of the finance, law, and health care professions, the housing industry, business, media, faith-based communities, and senior citizens.

SECTION 3. Subchapter B, Chapter 101, Human Resources Code, is amended by adding Section 101.031 to read as follows:

Sec. 101.031. SENIOR CITIZEN CONSUMER GUIDE; SUPPORT AND DISTRIBUTION. (a) The board by rule shall require an area agency on aging to submit annually to the comptroller current information on local service providers and resources for senior citizens for inclusion in the senior citizen consumer guide created under Section 403.026, Government Code. Each agency shall provide the information in a format prescribed by the comptroller.

(b) An area agency on aging shall make the guide available to as many senior citizens in the agency's service area as possible. The agency shall make the guide available in a large-print format and in alternate formats as necessary to enable all senior citizens to use the guide.

SECTION 4. (a) The comptroller shall coordinate a joint study of planning and financial strategies for long-term health care for the elderly and persons with disabilities to be conducted by:

- (1) the office of the comptroller;
- (2) the Texas Department on Aging;
- (3) the Texas Department of Human Services;
- (4) the Health and Human Services Commission;
- (5) the Texas Department of Insurance;
- (6) the office of public insurance counsel;
- (7) the Texas Department of Health;
- (8) the Employees Retirement System of Texas;
- (9) the Texas Department of Housing and Community Affairs;
- (10) The University of Texas System;
- (11) Texas A&M University; and
- (12) each medical school operated by The University of Texas System.

(b) The study shall include a consideration of financial methods of improving access to long-term health care, including:

- (1) long-term health care insurance;
 - (2) vouchers for long-term health care; and
 - (3) buy-in arrangements to managed care programs.
- (c) The comptroller may contract with an actuary for assistance with financial aspects of the study.
- (d) In this section, "long-term health care" includes:
- (1) adult day-care facilities;
 - (2) adult day health care facilities;
 - (3) home and community support services housing programs for the elderly or persons with disabilities;
 - (4) nursing facilities;
 - (5) personal care facilities;
 - (6) respite care services; and
 - (7) other services providing care for persons who are elderly or disabled.
- (e) Not later than December 15, 1998, the comptroller shall submit to the legislature a report containing findings and recommendations resulting from the study.

SECTION 5. Not later than January 10, 1998, each area agency on aging shall submit to the comptroller information on local resources for senior citizens in the agency's area for inclusion in the initial senior citizen consumer guide created under Section 403.026, Government Code, as added by this Act.

SECTION 6. Prior to completion of the guide, the comptroller shall provide opportunity for review and comment of the guide under development to consumer and provider groups involved in the delivery of long-term care services. Not later than February 14, 1998, the comptroller shall complete development of the senior citizen consumer guide required by Section 403.026, Government Code, as added by this Act, and make the guide available in the manner required by that section.

SECTION 7. Not later than January 15, 1999, the interagency work group created under Subsection (b), Section 403.026, Government Code, as added by this Act, shall prepare and deliver to the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over human services a report concerning the effectiveness of the senior citizen consumer guide required by Section 403.026, Government Code, as added by this Act.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3249 ON SECOND READING**

On motion of Senator Luna and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 3249, Relating to school buses; providing a penalty.

The bill was read second time.

Senator Luna offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 3249** in the following manner:

In SECTION 2, Sec. 34.002 subsection (a), Education Code, page 2, line 9, by striking: "~~547.7015, Transportation Code~~", and insert in its place: "34.002, Education Code".

In SECTION 4, Sec. 34.008 subsection (a)(2), Education Code, page 2, line 56-57, by striking: "~~547.7015, Transportation Code~~", and insert in its place: "34.002, Education Code".

In SECTION 5, Sec. 34.009 subsection (b), Education Code, page 3, line 13-14, by striking: "~~547.7015, Transportation Code~~", and insert in its place: "34.002, Education Code".

In SECTION 6, Sec. 521.022 (f), page 3, line 60-61, by deleting: In the subsection, "commercial transportation company" has the meaning assigned by Section 34.005, Education Code.

In SECTION 7, Sec. 541.201 (15), page 4, line 20-21, by deleting: as those terms are defined by Section 34.005, Education Code

In SECTION 11, Sec 547.701 subsection (b)(1)(A), Transportation Code, page 5, line 25, by striking: "~~547.7015~~", and insert in its place: "34.002, Education Code".

In SECTION 11, Sec 547.701 subsection (b)(2)(A), Transportation Code, page 5, line 32, by striking: "~~547.7015~~", and insert in its place: "34.002, Education Code".

The amendment was read and was adopted by a viva voce vote.

Senator Luna offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 3249** by adding Subsections (d) and (e) to Section 34.003, in SECTION 3 of the bill, to read as follows:

"(d) In this section, "passenger van" means a motor vehicle other than a motorcycle or passenger car, used to transport persons and designed to transport 15 or fewer passengers, including the driver."

"(e) "Motor bus" means a vehicle designed to transport more than 15 passengers, including the driver."

The amendment was read and was adopted by a viva voce vote.

Senator Luna offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 3249** by adding the following as SECTION 4 and renumbering subsequent sections accordingly:

Section 34.004, Education Code, as amended to read as follows:

Sec. 34.004. **STANDING CHILDREN.** A school district may not require or allow a child to stand on a school bus or passenger van that is in motion.

The amendment was read and was adopted by a viva voce vote.

CSHB 3249 as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3249 ON THIRD READING**

Senator Luna moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3249** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

CSHB 3249 was read third time and was passed by a viva voce vote.

GUESTS PRESENTED

Senator Truan was recognized and introduced to the Senate members of the Legislature in Nuevo Leon, Mexico: Chief Clerk Pablo Rodriguez Chavarria, Deputies Jorge Maldonado, Phillipe de Jesus Cantu, Alfredo Garza De la Garza, Jorge Salazar Salazar, and Israel Hurtado Acosta.

The Senate welcomed its guests.

HOUSE BILL 21 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 21, Relating to liability for the donation of medical devices to certain nonprofit organizations.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 21 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 21** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 21 was read third time and was passed by a viva voce vote.

HOUSE BILL 3244 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3244, Relating to the efficient use of services and facilities for adult offenders determined to have alcohol or drug abuse problems.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3244 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3244** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 3244 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

(Senator Brown in Chair)

HOUSE BILL 3269 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3269, Relating to requirements for evidences of coverages issued by health maintenance organizations.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3269 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3269** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 3269 was read third time and was passed by a viva voce vote.

HOUSE BILL 2481 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2481, Relating to faith-based chemical dependency treatment programs and counselors.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2481** by striking lines 46-48 on page 1 and substituting the following:

Sec. 464.054. MEDICAL SERVICES. (a) A program exempted under this subchapter shall not provide medical care, medical detoxification, or medical withdrawal services.

(b) Within 48 hours of a person being admitted into a program exempted under this subchapter, the person shall provide a notice in writing from a physician licensed to practice medicine in this State which states whether the person requires immediate medical care, medical detoxification, or medical withdrawal services to protect the person's health. The program may provide services to a person who, according to reasonable medical judgment, requires services under subsection (a), provided that the person is receiving necessary services from a qualified provider.

(c) The program shall keep the notice required under subsection (b) on file for each person to whom the program provides chemical dependency services.

The amendment was read and was adopted by a viva voce vote.

Senator Sibley, on behalf of Senator Harris, offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 2481**, Sec. 464.060 (Senate committee report, page 2, lines 37-38), by striking "to compete against a licensed program"

The amendment was read and was adopted by a viva voce vote.

HB 2481 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2481 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2481** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 2481 was read third time and was passed by a viva voce vote.

(Senator Sibley in Chair)

HOUSE BILL 3607 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3607, Relating to validating certain acts of the Garza County Underground and Fresh Water Conservation District.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3607 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that HB 3607 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 3607 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 1391 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1391, Relating to continuing education requirements for air conditioning and refrigeration contractors.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1

Amend HB 1391 by striking everything below the enacting clause and substituting the following:

SECTION 1. Section 4B, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4B. CONTINUING EDUCATION REQUIREMENTS ~~[PROGRAMS]~~. (a) The commissioner by rule shall ~~[may]~~ recognize or adopt ~~[, prepare, or administer]~~ continuing education programs for licensees. Participation in the programs is mandatory for renewal of a license issued under this Act ~~[voluntary]~~.

(b) A license holder is not required to participate in continuing education until the second anniversary of the date the license holder was initially licensed under this Act. A license holder required to participate in continuing education must annually provide proof to the commissioner that the license holder in the preceding year has attended six classroom hours of continuing education courses approved by the commissioner.

(c) The commissioner may permit the substitution of relevant education experience to comply with the requirements of this section. The substituted experience must be approved by the commissioner. For purposes of this section, relevant education experience includes participation in correspondence courses, manufacturer training, trade association workshops or seminars, chapter meetings, and supervised video instruction.

(d) Three hours of continuing education courses or relevant education experience approved by the commissioner shall cover technical, safety, or environmental aspects of air conditioning and refrigeration contracting.

(e) The commissioner may not require an examination under this section except for approval of a correspondence course.

(f) The commission shall adopt fees for continuing education providers in amounts reasonable and necessary to administer this section.

(g) A person seeking to provide a continuing education program must meet the requirements adopted by rule of the commissioner. An applicant that meets the requirements and that is approved by the commissioner may provide continuing education programs until the second anniversary of the date the provider's application was approved. A provider may reapply to the commissioner to act as a provider for additional two-year periods.

SECTION 2. (a) This Act takes effect September 1, 1997.

(b) The commissioner of licensing and regulation shall adopt rules and the Texas Commission of Licensing and Regulation shall adopt fees under this Act not later than January 1, 1998.

(c) Notwithstanding Section 4B(b), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), as added by this Act, a person who holds a license under that Act on the effective date of this Act is not required to fulfill continuing education required under that section to renew the license before September 1, 1999.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

HB 1391 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Lindsay asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1391 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1391** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Lindsay.

Absent-excused: Nelson.

HB 1391 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Lindsay asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 1553 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1553, Relating to court costs assessed for certain offenses to provide funding for child safety programs.

The bill was read second time.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1553** by striking all below the enacting clause and substituting the following:

SECTION 1. Article 102.014, Code of Criminal Procedure, is amended to read as follows:

Art. 102.014. COURT COSTS FOR CHILD SAFETY FUND IN MUNICIPALITIES. (a) The governing body of a municipality with a population greater than 850,000 according to the most recent federal decennial census that has adopted an ordinance, regulation, or order regulating the stopping, standing, or parking of vehicles as allowed by Section 542.202, Transportation Code [Subsection (a), Section 27, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)], or Chapter 682, Transportation Code [Article 6701d-24, Revised Statutes], shall by order assess a court cost on each parking violation not less than \$2 and not to exceed \$5. The court costs under this subsection shall be collected in the same manner that other fines in the case are collected.

(b) The governing body of a municipality with a population less than 850,000 according to the most recent federal decennial census that has adopted an ordinance, regulation, or order regulating the stopping, standing, or parking of vehicles as allowed by Section 542.202, Transportation Code [Subsection (a), Section 27, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)], or Chapter 682, Transportation Code [Article 6701d-24, Revised Statutes], may by order assess a court cost on each parking violation not to exceed \$5. The additional court cost under this subsection shall be collected in the same manner that other fines in the case are collected.

(c) A person convicted of an offense under Subtitle C, Title 7, Transportation Code [the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)], when the offense occurs within a school crossing zone as defined by Section 541.302 [20L] of that code [Act], shall pay as court costs \$25 [\$20] in addition to other taxable court costs. A person convicted of an offense under Section 545.066, Transportation Code [104, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)], shall pay as court costs \$25 [\$20] in addition to other taxable court costs. The additional court costs under this subsection shall be collected in the same manner that other fines and taxable court costs in the case are collected and shall be assessed

only in a municipality with a population of 950,000 or more according to the most recent federal decennial census.

(d) A person convicted of an offense under Section 25.093 [4.25], Education Code, or a child convicted of an offense under Section 25.094, Education Code, shall pay as taxable court costs \$20 in addition to other taxable court costs. The additional court costs under this subsection shall be collected in the same manner that other fines and taxable court costs in the case are collected.

(e) ~~(d)~~ In this article, a person is considered to have been convicted in a case if:

- (1) a sentence is imposed;
- (2) the defendant receives probation or deferred adjudication; or
- (3) the court defers final disposition of the case.

(f) ~~(e)~~ In a municipality with a population greater than 850,000 according to the most recent federal decennial census, the officer collecting the costs in a municipal court case shall deposit money collected under this article in the municipal child safety trust fund established as required by Chapter 106, Local Government Code.

(g) ~~(f)~~ In a municipality with a population less than 850,000 according to the most recent federal decennial census, the money collected under this article in a municipal court case must be used for a school crossing guard program if the municipality operates one. If the municipality does not operate a school crossing guard program or if the money received from court costs from municipal court cases exceeds the amount necessary to fund the school crossing guard program, the municipality may either deposit the additional money in an interest-bearing account or expend it for programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention.

(h) ~~(g)~~ Money collected under this article in a justice, county, or district court shall be used to fund school crossing guard programs in the county where they are collected. If the county does not operate a school crossing guard program, the county may:

- (1) remit fee revenues to school districts in its jurisdiction for the purpose of providing school crossing guard services;
- (2) fund programs the county is authorized by law to provide which are designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention;
- (3) provide funding to the sheriff's department for school-related activities;
- (4) provide funding to the county juvenile probation department; or
- (5) deposit the money in the general fund of the county.

(i) ~~(h)~~ Each collecting officer shall keep separate records of money collected under this article.

SECTION 2. (a) The change in law made by this Act applies only to a violation or an offense committed on or after the effective date of this Act. For purposes of this section, a violation or an offense is committed before the effective date of this Act if any element of the violation or offense occurs before that date.

(b) A violation or an offense committed before the effective date of this Act is covered by the law in effect when the violation or offense was committed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1997.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Moncrief offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **HB 1553** as follows:

(1) On page 2, lines 18-19, strike "950,000 or more according to the most recent federal decennial census" and substitute "400,000 or more".

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

HB 1553 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1553 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1553** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 1553 was read third time and was passed by a viva voce vote.

HOUSE BILL 1789 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1789, Relating to reductions by certain insurers in writing or in the authority of agents to bind or solicit certain types of personal lines insurance.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1789 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1789** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 1789 was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 196 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 196, Relating to the issuance of a contact lens prescription and a patient's right of access to that prescription; providing penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 196 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 196** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

CSHB 196 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 1285 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1285, Relating to the meetings of a condominium board or association.

The bill was read second time.

Senator Wentworth offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1285** as follows:

(1) In Section 2 of the bill, in the amended Section 82.108, Property Code, strike Subsection (f) (engrossed bill, page 3, line 23 through page 4, line 2), and substitute:

(f) An association, on the written request of a unit owner, shall inform the unit owner of the time and place of the next regular or special meeting of the board. If the association representative to whom the request is made does not know the time and place of the meeting, the association promptly shall obtain the information and disclose it to the unit owner or inform the unit owner where the information may be obtained.

(2) In Section 2 of the bill, in the amended Section 82.108, Property Code, strike Subsection (g) (engrossed bill, page 4, lines 3-13).

(3) In Section 4 of the bill, strike "September 1, 1997" and substitute "January 1, 1998" (engrossed bill, page 4, line 25).

The committee amendment was read and was adopted by a viva voce vote.

VOTE RECONSIDERED

On motion of Senator Wentworth and by unanimous consent, the vote by which Committee Amendment No. 1 was adopted was reconsidered.

Question—Shall Committee Amendment No. 1 to HB 1285 be adopted?

Senator Wentworth again offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend HB 1285 as follows:

(1) In Section 2 of the bill, in the amended Section 82.108, Property Code, strike Subsection (f) (engrossed bill, page 3, line 23 through page 4, line 2), and substitute:

(f) An association, on the written request of a unit owner, shall inform the unit owner of the time and place of the next regular or special meeting of the board. If the association representative to whom the request is made does not know the time and place of the meeting, the association promptly shall obtain the information and disclose it to the unit owner or inform the unit owner where the information may be obtained.

(2) In Section 2 of the bill, in the amended Section 82.108, Property Code, strike Subsection (g) (engrossed bill, page 4, lines 3-13).

(3) In Section 4 of the bill, strike "September 1, 1997" and substitute "January 1, 1998" (engrossed bill, page 4, line 25).

The committee amendment was again read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend HB 1285 by striking Section 3 of the bill and substituting the following:

SECTION 3. (a) The changes in law made by this Act to Chapter 82, Property Code, apply only to:

(1) a meeting held on or after January 1, 1998, in relation to a condominium; and

(2) a request made on or after January 1, 1998, to a condominium owners' association for the time and place of the next meeting of the board of directors of the association.

(b) A meeting held before January 1, 1998, is governed by the law in effect immediately preceding that date, and the former law is continued in effect for that purpose.

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 1285** as follows:

(1) On page 2, between lines 52 and 53 insert the following, numbering the sections appropriately:

SECTION ____ . Section 24.004, Property Code, is amended to read as follows:

Sec. 24.004. JURISDICTION. A justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits.

SECTION ____ . Section 24.005, Property Code, is amended by amending Subsection (f) and adding Subsection (i) to read as follows:

(f) The notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, ~~or~~ by registered mail, or by certified mail, return receipt requested, to the premises in question.

(i) If before the notice to vacate is given as required by this section the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include in the notice to vacate required by this section a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice.

SECTION ____ . Subsection (a), Section 24.006, Property Code, is amended to read as follows:

(a) Except as provided by Subsection (b), to be eligible to recover attorney's fees in an eviction ~~[a forcible entry and detainer suit or a forcible detainer]~~ suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed.

SECTION ____ . Section 24.0061, Property Code, is amended to read as follows:

Sec. 24.0061. WRIT OF POSSESSION. (a) A landlord who prevails in an eviction suit ~~[a forcible entry and detainer or a forcible detainer action]~~ is

entitled to a judgment for possession of the premises and a writ of possession. In this chapter, "premises" means the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally.

(b) A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.

(c) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.

(d) The writ of possession shall order the officer executing the writ to ~~[deliver possession of the premises to the landlord and to]:~~

(1) post a written warning of at least 8-1/2 by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and

(2) when the writ is executed:

(A) deliver possession of the premises to the landlord;

(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;

(C) ~~[(2)]~~ instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and

(D) ~~[(3)]~~ place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

(e) ~~[(d)]~~ The writ of possession shall authorize the officer, at the officer's discretion, to~~[:~~

~~[(1) post a written warning on the exterior of the front door of the rental unit, notifying the tenant that the writ has been issued and that it will be executed on or after a specific date and time stated in the warning; and~~

~~[(2) engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.~~

(f) ~~[(e)]~~ The officer may not require the landlord to store the property.

(g) ~~[(f)]~~ The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(h) A sheriff or constable ~~[(g) An officer]~~ may~~[; if necessary,]~~ use reasonable force in executing a writ under this section.

SECTION _____. Section 24.007, Property Code, is amended to read as follows:

Sec. 24.007. APPEAL. A final judgment of a county court in an eviction ~~[a forcible entry and detainer suit or a forcible detainer]~~ suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only. A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

SECTION ____ . Section 24.008, Property Code, is amended to read as follows:

Sec. 24.008. EFFECT ON OTHER ACTIONS. An eviction ~~[A forcible entry and detainer suit or a forcible detainer]~~ suit does not bar a suit for trespass, damages, waste, rent, or mesne profits.

SECTION ____ . Section 24.011, Property Code, is amended to read as follows:

Sec. 24.011. NONLAWYER REPRESENTATION. In eviction ~~[forcible detainer]~~ suits in justice court for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any eviction ~~[forcible detainer or forcible entry and detainer]~~ suit in justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.

SECTION ____ . Chapter 91, Property Code, is amended by adding Section 91.006 to read as follows:

Sec. 91.006. LANDLORD'S DUTY TO MITIGATE DAMAGES. (a) A landlord has a duty to mitigate damages if a tenant abandons the leased premises in violation of the lease.

(b) A provision of a lease that purports to waive a right or to exempt a landlord from a liability or duty under this section is void.

SECTION ____ . Subsection (d), Section 92.009, Property Code, is, amended to read as follows:

(d) The writ of reentry must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer action. A sheriff or constable may use reasonable force in executing a writ of reentry under this section.

SECTION ____ . Section 92.056, Property Code, is amended to read as follows:

Sec. 92.056. LANDLORD LIABILITY AND TENANT REMEDIES; NOTICE AND TIME FOR REPAIR. (a) A landlord's liability under this section is subject to Section 92.052(b) regarding conditions that are caused by a tenant and Section 92.054 regarding conditions that are insured casualties.

(b) A landlord [has a duty to repair or remedy a condition and] is liable to a tenant as provided by this subchapter if:

(1) [the condition materially affects the physical health or safety of an ordinary tenant;

~~[(2)] the tenant has given the landlord notice to repair or remedy a [the] condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid [as required by Subsection (a) of Section 92.052];~~

~~(2) the condition materially affects the physical health or safety of an ordinary tenant;~~

~~(3) the tenant has given the landlord a subsequent written notice to repair or remedy the condition after a reasonable time to repair or remedy the condition following the notice given under Subdivision (1) or the tenant has given the notice under Subdivision (1) by sending that notice by certified mail, return receipt requested, or by registered mail;~~

~~(4) the landlord has had a reasonable time to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's subsequent notice under Subdivision (3); considering the nature of the problem and the reasonable availability of materials, labor, and utilities from a utility company];~~

~~[(4) the tenant has given subsequent written notice to the landlord, stating that the tenant intends to terminate the lease, exercise repair and deduct remedies, or pursue judicial remedies;]~~

~~(5) the landlord has not made a diligent effort to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's notice under Subdivision (3); and~~

~~(6) the tenant was not delinquent in the payment of rent at the time any notice [the notices] required by [Subdivisions (2) and (4) of] this subsection was [were] given.~~

~~(c) For purposes of Subsection (b)(4) or (5), a landlord is considered to have received the tenant's notice when the landlord or the landlord's agent or employee has actually received the notice or when the United States Postal Service has attempted to deliver the notice to the landlord.~~

~~(d) For purposes of Subsection (b)(3) or (4), in determining whether a period of time is a reasonable time to repair or remedy a condition, there is a rebuttable presumption that seven days is a reasonable time. To rebut that presumption, the date on which the landlord received the tenant's notice, the severity and nature of the condition, and the reasonable availability of materials and labor and of utilities from a utility company must be considered.~~

~~(e) [The landlord's duty under this subsection is subject to the provisions of Subsection (b) of Section 92.052 regarding conditions which are caused by the tenant and Section 92.054 regarding conditions which are insured casualties.~~

~~[(b)] Except as provided in Subsection (f) [(c) of this section], a tenant to whom a landlord is liable under Subsection (b) [(a)] of this section may:~~

~~(1) terminate the lease [if the condition is not repaired or remedied within seven days after the tenant's notice of intent to terminate];~~

~~(2) have the condition repaired or remedied according to Section 92.0561;~~

~~(3) deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy according to Section 92.0561; and~~

(4) obtain judicial remedies according to Section 92.0563 ~~[if the condition is not repaired or remedied within seven days after the tenant's notice of intent to repair or remedy]~~.

(f) ~~[(e)]~~ A tenant who elects to terminate the lease under Subsection (e) ~~[(b) of this section]~~ is:

(1) entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later;

(2) entitled to deduct the tenant's security deposit from the tenant's rent without necessity of lawsuit or obtain a refund of the tenant's security deposit according to law; and

(3) not entitled to the other repair and deduct remedies under Section 92.0561 or the judicial remedies under Subdivisions (1) and (2) of Subsection (a) of Section 92.0563.

SECTION ____ Subsections (a) through (d), Section 92.0561, Property Code, are amended to read as follows:

(a) If the landlord is liable to the tenant under ~~[Subsection (a) of Section 92.056(b)]~~ ~~[92.056]~~, the tenant may have the condition repaired or remedied and may deduct the cost from a subsequent rent payment as provided in this section.

(b) The tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent under the lease or \$500, whichever is greater. However, if the tenant's rent is subsidized in whole or in part by a governmental agency, the deduction limitation of one month's rent shall mean the fair market rent for the dwelling and not the rent that the tenant pays. The fair market rent shall be determined by the governmental agency subsidizing the rent, or in the absence of such a determination, it shall be a reasonable amount of rent under the circumstances.

(c) Repairs and deductions under this section may be made as often as necessary so long as the total repairs and deductions in any one month do not exceed one month's rent or \$500, whichever is greater.

(d) Repairs under this section may be made only if all of the following requirements are met:

(1) The landlord has a duty to repair or remedy the condition under Section 92.052, and the duty has not been waived in a written lease by the tenant under Subsection (e) or (f) of Section 92.006.

(2) The tenant has given notice ~~[notices]~~ to the landlord as required by Section ~~92.056(b)(1)~~ ~~[92.056]~~, and, if required, a subsequent notice under Section 92.056(b)(3), and at least one of those notices ~~[the second or last notice by the tenant to the landlord]~~ states that the tenant intends to repair or remedy the condition. The notice shall also contain a reasonable description of the intended repair or remedy.

(3) Any one of the following events has occurred:

(A) The landlord has failed to remedy the backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling.

(B) The landlord has expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling has totally ceased.

(C) The landlord has expressly or impliedly agreed in the lease to furnish heating or cooling equipment; the equipment is producing inadequate heat or cooled air; and the landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant.

(D) The landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant.

SECTION __. (a) Section 91.006, Property Code, as added by this Act, applies only to a lease entered into on or after the effective date of this Act.

(b) The changes in law made by Sections 92.056 and 92.0561, Property Code, as amended by this Act, apply only to residential leases entered into or renewed on or after January 1, 1998. Residential leases entered into or renewed before that date are covered by the law as it existed at the time the lease was entered into or renewed, and the former law is continued in effect for that purpose.

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 3

Amend HB 1285 by adding the following appropriately numbered sections to the bill and renumbering subsequent sections of the bill appropriately:

SECTION __. Section 204.008, Property Code, is amended to read as follows:

Sec. 204.008. METHOD OF ADOPTION. An extension, addition to, or modification of restrictions proposed by a property owners' association may be adopted:

(1) by a written ballot that states the substance of the amendment and specifies the date by which a ballot must be received to be counted;

(2) at a meeting of the members represented by the property owners' association if written notice of the meeting stating the purpose of the meeting is delivered to each owner of property in the subdivision not later than the 10th day before the date the meeting is scheduled;

(3) by door-to-door circulation of a petition by the property owners' association or a person authorized by the property owners' association;

(4) by a method permitted by the existing restrictions; or

(5) by a combination of the methods described by this section.

SECTION __. Section 204.010, Property Code, is amended to read as follows:

Sec. 204.010. POWERS OF PROPERTY OWNERS' ASSOCIATION.
(a) Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the property owners' association, acting through its board of directors or trustees, may:

- (1) adopt and amend bylaws;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect regular assessments or special assessments for common expenses from property owners;
- (3) hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting the subdivision;
- (5) make contracts and incur liabilities relating to the operation of the subdivision and the property owners' association;
- (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the common areas of the subdivision;
- (7) make additional improvements to be included as a part of the common area;
- (8) grant easements, leases, licenses, and concessions through or over the common area;
- (9) impose and receive reasonable payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners;
- (10) impose and receive reasonable interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments;
- (11) ~~[if notice and an opportunity to be heard are given,]~~ collect reimbursement of reasonable ~~[actual]~~ attorney's fees and other reasonable costs incurred by the property owners' association in enforcing ~~[relating to violations of the subdivision's]~~ restrictions or the property owners' association's bylaws and rules that the owner has allegedly violated if, before incurring attorney's fees:
 - (A) the association sends to the property owner, by certified mail, return receipt requested, at the owner's last known address as shown in the association's records, a notice of a meeting of the board during which the owner will be given the opportunity to be heard on the issue of the alleged violation; and
 - (B) the notice is mailed as provided by Subsection (c) to the property owner and informs the owner of the owner's right to appear and be heard regarding the alleged violation;
- (12) charge costs, fees, and other charges authorized under this section to an owner's assessment account and collect the costs, fees, and other charges in any manner provided in the restrictions for the collection of assessments;
- (13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;
- (14) impose reasonable charges for preparing, recording, or copying amendments to the restrictions, resale certificates, or statements of unpaid assessments;
- (15) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary;

(16) if the restrictions allow for an annual increase in the maximum regular assessment without a vote of the membership, ~~delay [assess] the increase in annual assessments allowed under the restrictions, accumulate the increase, and assess all or part of any accumulated increase in a subsequent year subject to the approval of a majority of association members who are present in person or represented by proxy at an annual or special meeting of the association membership [annually or accumulate and assess the increase after a number of years];~~

(17) subject to the requirements of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and by majority vote of its board of directors, indemnify a director or officer of the property owners' association who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director;

(18) if the restrictions vest the architectural control authority in the property owners' association or if the authority is vested in the property owners' association under Section 204.011:

(A) implement written architectural control guidelines for its own use or record the guidelines in the real property records of the applicable county; and

(B) modify the guidelines as the needs of the subdivision change;

(19) exercise other powers conferred by the restrictions, its articles of incorporation, or its bylaws;

(20) exercise other powers that may be exercised in this state by a corporation of the same type as the property owners' association; and

(21) exercise other powers necessary and proper for the governance and operation of the property owners' association.

(b) Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the property owners' association, acting through its board of directors or trustees, may, under Subsection (a)(9):

(1) except as provided by Subdivision (2), impose and receive reasonable fees or charges for a service only after obtaining approval of a majority of those association members who are present in person or represented by proxy at an annual or special meeting of the association;

(2) continue to impose and receive reasonable fees or charges through January 15, 1998, for a service for which the fees or charges were first imposed between August 28, 1995, and September 1, 1997; and

(3) continue to impose and receive fees or charges that were first imposed during that time period after January 15, 1998, if the fees and charges are approved by a majority of those association members who are present in person or represented by proxy at an annual or special meeting of the association held before January 15, 1998.

(c) Except as provided by this subsection, the notice provided by Subsection (a)(11)(B) must be mailed to the property owner not later than the 30th day before the date of a scheduled board meeting. Notice may be mailed less than 30 days before the date of a scheduled board meeting for an alleged violation that necessitates immediate judicial action.

(d) Powers enumerated by this section are in addition to any other powers granted to a property owners' association by this chapter or other law. This section does not limit a property owners' association's rights or powers as stated in the restrictions or the association's articles of incorporation or bylaws.

ELLIS
PATTERSON

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 4

Amend **HB 1285** by adding a section to the bill, to be numbered appropriately, to read as follows and by renumbering the subsequent sections of the bill appropriately:

SECTION ____ Subchapter B, Chapter 82, Property Code, is amended by adding Section 82.070 to read as follows:

Sec. 82.070. MEETING AT WHICH AMENDMENTS MAY BE CONSIDERED. (a) An association or a board may not meet to consider an amendment or other change to the declaration, articles of incorporation, bylaws, or rules of the association unless the association or board has given to each unit owner:

(1) a copy of:

(A) in the case of an amendment to the declaration or articles of incorporation of the association, all documents that comprise the declaration or articles of incorporation; or

(B) in the case of an amendment to the bylaws or rules of the association, a complete set of all bylaws or rules of the association; and

(2) a document showing the specific amendment or other change that would be made to the declaration, articles of incorporation, bylaws, or rules.

(b) The information described by Subsection (a) must be given to each unit owner after the 20th day but before the 10th day preceding the date of the meeting. The information is considered to have been given to a unit owner on the date the information is personally delivered to the unit owner, as shown by a receipt signed by the unit owner, or on the date shown by the postmark on the information after it is deposited in the United States mail with a proper address and postage paid.

The amendment was read and was adopted by a viva voce vote.

HB 1285 as amended was passed to third reading by a viva voce vote.

(Senator Truan in Chair)

HOUSE BILL 1427 ON SECOND READING

Senator Whitmire asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

HB 1427, Relating to the possession and use of tobacco products by employees of the Texas Department of Criminal Justice.

There was objection.

Senator Whitmire then moved to suspend the regular order of business and take up **HB 1427** for consideration at this time.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Duncan, Ellis, Gallegos, Galloway, Haywood, Lindsay, Lucio, Madla, Patterson, Shapiro, Shapleigh, Sibley, Truan, West, Whitmire.

Nays: Carona, Fraser, Harris, Luna, Moncrief, Nixon, Ogden, Ratliff, Wentworth, Zaffirini.

Absent-excused: Nelson.

HB 1427 was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Carona, Fraser, Harris, Luna, Moncrief, Nixon, Ogden, Ratliff, Wentworth, and Zaffirini asked to be recorded as voting "Nay" on the passage of the bill to third reading.

(Senator Ratliff in Chair)

HOUSE JOINT RESOLUTION 31 ON SECOND READING

Senator Patterson asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

HJR 31, Proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.

There was objection.

Senator Patterson then moved to suspend the regular order of business and take up **HJR 31** for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 8, Present-not voting 1.

Yeas: Barrientos, Brown, Cain, Carona, Ellis, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Moncrief, Nixon, Patterson, Ratliff, Shapiro, Shapleigh, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Duncan, Luna, Madla, Ogden, Sibley, Truan.

Present-not voting: Fraser.

Absent-excused: Nelson.

HJR 31 was read second time.

Senator Patterson offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **HJR 31** as follows:

Strike all below the resolving clause and substitute the following:

SECTION 1. Section 50, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 50. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

- (1) the purchase money thereof, or a part of such purchase money;
- (2) [;] the taxes due thereon;
- (3) [;] an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
- (4) [;] the refinancing of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;
- (5) [~~or for~~] work and material used in constructing improvements thereon, ~~if [and in this last case only when]~~ the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; or
- (6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1) - (a)(5) of this section;

(L) is scheduled to be repaid in substantially equal successive monthly installments beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section; and

(ii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; or

(iii) a person licensed to make regulated loans, as provided by statute of this state; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a confession or judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made; and

(x) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply; or

(7) a reverse mortgage.

(b) An [nor may the] owner or claimant of the property claimed as homestead may not[-if married,] sell or abandon the homestead without the consent of each owner and the [other] spouse of each owner, given in such manner as may be prescribed by law.

(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, [except for a debt described by this section,] whether such mortgage, [or] trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.

(d) A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.

(e) A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1) - (a)(5) that includes the advance of additional funds may not be secured by a valid lien against the homestead unless:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section; or

(2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of

credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT

DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80% OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF THE LOAN AMOUNT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR

BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE SAME LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS." If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) A lender or assignee for value may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made in accordance with Subsection (a)(6)(Q)(ix) of this section if:

(1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to an extension of credit under Subsection (a)(6); and

(2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value stated in the written acknowledgment was incorrect.

(i) This subsection shall not affect or impair any right of the borrower to recover damages from the lender or assignee under applicable law for wrongful foreclosure. A purchaser for value without actual knowledge may conclusively presume that a lien securing an extension of credit described by Subsection (a)(6) of this section was a valid lien securing the extension of credit with homestead property if:

(1) the security instruments securing the extension of credit contain a disclosure that the extension of credit secured by the lien was the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(2) the purchaser acquires the title to the property pursuant to or after the foreclosure of the voluntary lien; and

(3) the purchaser is not the lender or assignee under the extension of credit.

(j) Subsection (a)(6) and Subsections (e)-(i) of this section are not severable, and none of those provisions would have been enacted without the others. If any of those provisions are held to be preempted by the laws of the United States, all of those provisions are invalid. This subsection shall not apply to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)-(i) is held to be preempted.

(k) "Reverse mortgage" means an extension of credit:

(1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner's spouse;

(2) that is made to a person who is or whose spouse is 55 years or older;

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower based on the equity in a borrower's homestead;

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;

(6) that requires no payment of principal or interest until:

(A) the homestead property securing the loan is sold or otherwise transferred; or

(B) all borrowers cease occupying the homestead property as a principal residence for more than 180 consecutive days and the location of the homestead property owner is unknown to the lender;

(7) that provides that if the lender fails to make loan advances as required in the loan documents and if the lender fails to cure the default as required in the loan documents, the lender forfeits all principal and interest of the reverse mortgage; and

(8) that is not made unless the owner of the homestead attests in writing that the owner received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives.

(l) Advances made under a reverse mortgage and interest on those advances have priority over a lien filed for record in the real property records in the county where the homestead property is located after the reverse mortgage is filed for record in the real property records of that county.

(m) A reverse mortgage may provide for an interest rate that is fixed or adjustable and may also provide for interest that is contingent on appreciation in the fair market value of the homestead property. Although payment of principal or interest shall not be required under a reverse mortgage until the entire loan becomes due and payable, interest may accrue and be compounded during the term of the loan as provided by the reverse mortgage loan agreement.

(n) A reverse mortgage that is secured by a valid lien against homestead property may be made or acquired without regard to the following provisions of any other law of this state:

(1) a limitation on the purpose and use of future advances or other mortgage proceeds;

(2) a limitation on future advances to a term of years or a limitation on the term of open-end account advances;

(3) a limitation on the term during which future advances take priority over intervening advances;

(4) a requirement that a maximum loan amount be stated in the reverse mortgage loan documents;

(5) a prohibition on balloon payments;

(6) a prohibition on compound interest and interest on interest;

(7) a prohibition on contracting for, charging, or receiving any rate of interest authorized by any law of this state authorizing a lender to contract for a rate of interest; and

(8) a requirement that a percentage of the reverse mortgage proceeds be advanced before the assignment of the reverse mortgage.

(o) For the purposes of determining eligibility under any statute relating to payments, allowances, benefits, or services provided on a means-tested basis by this state, including supplemental security income, low-income energy assistance, property tax relief, medical assistance, and general assistance:

(1) reverse mortgage loan advances made to a borrower are considered proceeds from a loan and not income; and

(2) undisbursed funds under a reverse mortgage loan are considered equity in a borrower's home and not proceeds from a loan.

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made at regular intervals according to a plan established by the original loan agreement.

(q) To the extent that any statutes of this state, including without limitation, Section 41.001 of the Texas Property Code, purport to limit encumbrances that may properly be fixed on homestead property in a manner that does not permit encumbrances for extensions of credit described in Subsection (a)(6) or (a)(7) of this section, the same shall be superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, authorizing a voluntary consensual encumbrance on homestead property.

(b) The constitutional amendment takes effect January 1, 1998.

(c) This temporary provision takes effect on the adoption of the amendment by the voters and expires January 2, 1998.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The amendment to the Texas Constitution expanding the types of liens for home equity loans that a lender, with the homeowner's consent, may place against a homestead."

The amendment was read.

(President in Chair)

Senator Patterson offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 1A

Amend Floor Amendment No. 1 to HJR 31 on page 15, line 22 by adding a new section (r) as follows:

(r) the Supreme Court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a)(6) of this section.

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Fraser asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 1A.

Senator Barrientos offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to HJR 31 on page 1, line 18 by striking section (5) and replacing it with a new section (5) as follows:

(5) [~~or for~~] work and material used in constructing improvements thereon, if [~~and in this last case only when~~] the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead. Such a contract shall not be executed until 12 days after an owner of the homestead initiates loan application, and any such contract may be rescinded by any owner of the homestead within three days after its execution by all parties without

penalty or charge, and may not be executed in any location other than the office of a lender, an attorney at law, or a title company; or

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Fraser asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 2.

(Senator Ratliff in Chair)

Senator Nixon offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend Floor Amendment No. 1 to **HJR 31** as follows:

On page 4, between lines 23 and 24 add new Subsections (a)(6)(P)(iv) and (a)(6)(P)(v) to read as follows:

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase.

(v) A person who is related to the homestead property owner within the second degree of affinity or consanguinity.

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Fraser asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 3.

Senator Ellis offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 4

Amend Floor Amendment No. 1 to **HJR 31** Section 50, Article XVI, Texas Constitution, by adding a new section (____) to read as follows:

(____) The Finance Commission shall appoint a director to conduct research on the availability, quality, and prices of financial services and research the practices of business entities in the state that provide financial services under this section. The director shall collect information and produce reports on lending activity of those making loans under this Section. The director shall report his or her findings to the Legislature not later than December 1 of each year.

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Fraser asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 4.

(Senator Brown in Chair)

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

RECORD OF VOTE

Senator Fraser asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 1 as amended.

HJR 31 as amended was passed to third reading by the following vote: Yeas 21, Nays 8, Present-not voting 1.

Yeas: Barrientos, Brown, Cain, Carona, Ellis, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Moncrief, Nixon, Patterson, Ratliff, Shapiro, Shapleigh, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Duncan, Luna, Madla, Ogden, Sibley, Truan.

Present-not voting: Fraser.

Absent-excused: Nelson.

VOTE RECONSIDERED

On motion of Senator Wentworth and by unanimous consent, the vote by which **HB 1285** was passed to third reading was reconsidered.

HB 1285, Relating to the meetings of a condominium board or association.

Question—Shall **HB 1285** be passed to third reading?

On motion of Senator Wentworth and by unanimous consent, the vote by which Floor Amendment No. 4 was adopted was reconsidered.

Question—Shall Floor Amendment No. 4 to **HB 1285** be adopted?

Senator Carona offered the following amendment to Floor Amendment No. 4:

Floor Amendment No. 5

Amend Floor Amendment No. 4 to **HB 1285** as follows:

On page 1, strike lines 11-18 and renumber remaining subsections accordingly.

The amendment to Floor Amendment No. 4 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 4 as amended, the amendment as amended was adopted by a viva voce vote.

HB 1285 as amended was again passed to third reading by a viva voce vote.

HOUSE BILL 1285 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1285** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 1285 was read third time and was passed by a viva voce vote.

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

SB 81, SB 89, SB 168, SB 197, SB 271, SB 395, SB 506, SB 551, SB 745, SB 910, SB 1262, SB 1286, SB 1460, SB 1702, SB 1739, SB 1793, SB 1930, SCR 99, SCR 105, SJR 39, HB 66, HB 92, HB 110, HB 219, HB 254, HB 308, HB 312, HB 325, HB 332, HB 479, HB 561, HB 784, HB 1012, HB 1039, HB 1243, HB 1333, HB 1484, HB 1498, HB 1534, HB 1595, HB 1640, HB 1708, HB 1759, HB 1870, HB 1881, HB 1914, HB 1968, HB 1974, HB 2145, HB 2156, HB 2192, HB 2328, HB 2389, HB 2396, HB 2448, HB 2451, HB 2522, HB 2526, HB 2531, HB 2563, HB 2596, HB 2673, HB 2685, HB 2688, HB 2689, HB 2692, HB 2693, HB 2768, HB 2776, HB 2829, HB 2880, HB 2920, HB 3101, HB 3112, HB 3125, HB 3202, HB 3233, HB 3246, HB 3314, HB 3329, HB 3372, HB 3380, HB 3541, HB 3542, HB 3549, HB 3581, HB 3590, HCR 44, HCR 137, HCR 145, HCR 189, HCR 243, HCR 276

HOUSE BILL 2214 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2214, Relating to fees for correspondence courses for certain veterans and the children of certain veterans.

The bill was read second time.

Senator Fraser offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2214** by replacing Section 1 with the following SECTION 1:

SECTION 1. Section 54.545, Education Code, is amended by amending Subsection (c) to read as follows:

(c) Subchapter B and D do not apply to a fee charged under this section, except that a governing board of an institution of higher education may grant an exemption provided by Section 54.203 if such an exemption will not result in an increased cost to other students or does not diminish the availability of correspondence courses.

The committee amendment was read.

On motion of Senator Barrientos, Committee Amendment No. 1 was tabled by a viva voce vote.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2214** by replacing Section 1 with the following SECTION 1:
SECTION 1. Section 54.545, Education Code, is amended by amending Subsection (c) to read as follows:

(c) Subchapter B and D do not apply to a fee charged under this section, except to a fee for a correspondence course taken by a student who would qualify for an exemption from tuition under Section 54.203 if the correspondence course applies towards the students' degree plan. The governing board of an institution of higher education may grant an exemption provided by Section 54.203 for continuing education courses.

The amendment was read and was adopted by a viva voce vote.

HB 2214 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2214 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2214** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 2214 was read third time and was passed by a viva voce vote.

(Senator Truan in Chair)

HOUSE BILL 998 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 998, Relating to the conflict-of-interests prohibition applying to a local official who has a substantial interest in a business entity.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 998 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 998** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

HB 998 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE CONCURRENT RESOLUTION 287

The Presiding Officer laid before the Senate the following resolution:

HCR 287, Instructing the enrolling clerk of the House to make technical corrections in **HB 710**.

SIBLEY

The resolution was read.

On motion of Senator Sibley and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

SENATE RULE 7.21 SUSPENDED
(Printing Rule)

On motion of Senator Brown and by unanimous consent, Senate Rule 7.21 was suspended as it relates to the printing of the House amendments to **SB 1**.

ORDERED NOT PRINTED

On motion of Senator Brown and by unanimous consent, the amendments to **SB 1** were ordered not printed in the *Senate Journal*.

SENATE BILL 1 WITH HOUSE AMENDMENTS

Senator Brown called **SB 1** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

The amendments were read.

Senator Brown moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Lucio, Wentworth, Armbrister, and Truan.

SENATE JOINT RESOLUTION 17 WITH HOUSE AMENDMENT

Senator Brown called **SJR 17** from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer laid the resolution and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SJR 17** in SECTION 1 of the resolution, after proposed Subsection (g), Section 49-d-8, Article III, Texas Constitution (House committee report, page 6, between lines 14 and 15) by adding a new Subsection (h) to read as follows:

(h) The Texas Water Development Fund II, including any account in that fund, may not be used to finance or aid any project that contemplates or results in the removal from the basin of origin of any surface water necessary to supply the reasonably foreseeable future water requirements for the next ensuing 50-year period within the river basin of origin, except on a temporary, interim basis.

The amendment was read.

Senator Brown moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SJR 17** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Brown, Chair; Lucio, Wentworth, Armbrister, and Truan.

**CONFERENCE COMMITTEE ON
SENATE BILL 798 DISCHARGED**

On motion of Senator Harris and by unanimous consent, the Senate conferees on **SB 798** were discharged.

Question—Shall the Senate concur in the House amendment to **SB 798**?

Senator Harris moved to concur in the House amendment to **SB 798**.

The motion prevailed by a viva voce vote.

HOUSE BILL 2799 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2799, Relating to investment practices of governmental entities.

The bill was read second time.

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2799** by adding the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill accordingly:

SECTION ____ . Subchapter B, Chapter 2256, Government Code, is amended by adding Section 2256.056 to read as follows:

Sec. 2256.056. COMPLIANCE WITH OTHER LAWS. Notwithstanding any other law, a local government may not issue for any purpose or cause to be issued in its behalf any installment sale obligation or lease-purchase obligation having the principal amount of \$1 million or more without complying with the provisions of Section 3.002, Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes), regardless of whether the obligation was issued individually or in a series of related transactions, or whether the obligation was issued with no recourse to the local government.

The committee amendment was read and was adopted by a viva voce vote.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2799** in Committee Amendment No. 1 (page 1, line 13, Senate committee printing) by striking the words "local government" and substituting "municipality with a population of less than 50,000".

The amendment was read and was adopted by a viva voce vote.

HB 2799 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Bivins asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 2799 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2799** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Bivins.

Absent-excused: Nelson.

HB 2799 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Bivins asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2827 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2827, Relating to the death of an inmate in the custody of the Texas Department of Criminal Justice or imprisoned in a facility operated by or under contract with the department.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2827 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2827** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Nelson.

CSHB 2827 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call).

**NOTICE GIVEN FOR
LOCAL AND UNCONTESTED CALENDAR**

Senator Harris announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held upon the conclusion of the daily session Monday, May 26, 1997, and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

MEMORIAL RESOLUTIONS

SR 843 - by Bivins: In memory of Robert J. Lang of Dalhart.

SR 845 - by Fraser: In memory of Watkins Reynolds "Watt" Matthews.

WELCOME AND CONGRATULATORY RESOLUTIONS

SR 844 - by Gallegos: Congratulating Dr. W. R. Fuller of Houston.

SR 846 - by Barrientos: Welcoming the participants in the Seventh International Conference of Fire Service Women to Austin.

SR 847 - by Barrientos: Commending Tom Jensen and Claire Hodgins of Austin.

SR 848 - by Cain: Congratulating Taryn Freeze of Forney.

SR 849 - by Zaffirini: Congratulating Arnulfo Zamora, Jr., of Laredo.

SR 850 - by Madla: Congratulating Kylie Nabors of San Antonio.

SR 851 - by Madla: Congratulating Amber Rakowitz of San Antonio.

SR 852 - by Madla: Congratulating Sarah Trampota of San Antonio.

SR 853 - by Madla: Congratulating Robin Pohl of San Antonio.

SR 854 - by Madla: Congratulating Malia Knezek of San Antonio.

SR 855 - by Shapleigh: Congratulating Charles C. Walden of El Paso.

SR 856 - by Duncan: Congratulating Charles D. "Chuck" Sudduth of Lubbock.

SR 857 - by Shapleigh: Congratulating Roger A. Winter of El Paso.

SR 858 - by Shapleigh: Commending Georgia Baca of Fabens.

SR 859 - by Shapleigh: Congratulating Leslie Hilverding of El Paso.

MISCELLANEOUS RESOLUTIONS

HCR 254 - (Moncrief): Recognizing the Very Special Arts-Texas program.

HCR 274 - (Moncrief): Recognizing the Tarrant County Employment Network.

ADJOURNMENT

On motion of Senator Brown, the Senate at 4:22 p.m. adjourned, in memory of Doyle H. Lindgren of Dallas, father of Janna Burleson of Senator West's office, until 9:30 a.m. Monday, May 26, 1997.

APPENDIX

SENT TO GOVERNOR

May 24, 1997

SB 10, SB 12, SB 18, SB 213, SB 331, SB 365, SB 426, SB 637, SB 693, SB 712, SB 1017, SB 1028, SB 1040, SB 1081, SB 1163, SB 1164, SB 1175, SB 1248, SB 1368, SB 1391, SB 1450, SB 1479, SB 1517, SB 1534, SB 1546, SB 1622, SB 1623, SB 1630, SB 1765, SB 1899, SCR 57, SCR 89, SCR 91

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OF THE

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Adjourned June 2, 1997



VOLUME IV

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